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AMENDMENTS IN HOUSE OF COMMONS PROCEDURE SINCE 1881

THE AIMS AND TENDENCIES OF THE NEWER STANDING ORDERS

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Students of the history and working of representative legislative institutions in every part of the world where these institutions are in existence are under indebtedness to Professor Redlich for the thoroughness and completeness with which he has performed a task never before attempted by any historian of the house of commons. In his scholarly book, published in German in 1905, and now more generally available through Mr. Steinthal's admirable translation into English,[1] supplemented by a chapter of twenty-one pages by Sir Courtenay Ilbert, Professor Redlich has traced the history of house of commons procedure from the earliest days down to the important time-economizing changes which were made in the first and second sessions of the parliament elected in January, 1906.

As far as my knowledge goes there are now in existence only two modern books—only two books published since the reform act of 1832—in which any detailed history of parliamentary procedure at Westminster is to be found. Singularly, little attention has hitherto been given in England to the history of parliamentary procedure,

[1] *The Procedure of the House of Commons: A Study of its History and Present Form.* By Josef Redlich. Translated by A. Ernest Steinthal. With an Introduction and Supplementary Chapter by Sir Courtenay Ilbert, K.C.S.I. Three volumes, pp. xxxix, 212, 264, 334. London: Archibald Constable & Company, Ltd., 1908.

even by students of constitutional development, although since 1576, when Sir Thomas Smith wrote his *De Republica Anglorum libri tres*, and particularly since the middle years of the seventeenth century, when Hooker, for the use of the parliament in Dublin, compiled his account of the method of proceeding in parliament at Westminster, there have been many manuals describing contemporary procedure in the house of commons. There has never been a lack of interest in the actual methods by which parliament goes about its work; but as far as I can ascertain, there have been published in England only two books concerned with the history of parliamentary procedure. One of these is my *Unreformed House of Commons*, in which there are chapters tracing the development of procedure from the beginning of the journals of the house of commons in 1547 to the reform act of 1832, the point at which my book stops both as regards the representative system and the organization and usages of the house; and the other is Professor Redlich's monumental work.

Professor Redlich's book is concerned exclusively with usages and procedure. It is in three volumes, extends to over eight hundred pages, and traces in detail the history of procedure from the period covered by the rolls of parliament (1278 to 1503) down to the new standing orders of 1906 and 1907. Nothing that is really new or illuminating rewarded Professor Redlich's diligent research in the rolls of parliaments. It is one of the outstanding facts in the history of parliament that in the reigns of Henry V and Henry VI enactment by bill—enactment generally in the present day form—was substituted for the earlier method of enactment by petition. Three readings for a bill—which is still the procedure—was the rule in 1547 when the journals of the commons begin. Exactly when and why this procedure was adopted has so far not been discovered; and while the journals are necessarily the only authoritative source whence development in procedure can be learned, the one fact ascertainable from them is that between 1547 and 1832, except for the evolution of select committees sitting as far away from Westminster as the Middle Temple or the Guildhall, into committees of the whole which always met in the chamber of the commons, there were no changes of importance in the methods in which the house of commons discharged the business that came before it.

Much of the material for a general history of the house of commons from the reign of Elizabeth to that of William IV is to be found in the memoirs and letters of men who were of the house. There is an abundance of this material. It is to be found with increasing frequency in the memoirs and letters of the period between the commonwealth and the reform act of 1832. These memoirs and letters, however, throw little light on procedure. The nineteenth century was turned before there is any trace in this extra-official literature of a need for reforms or changes in the house of commons procedure; and the general impression left by a study of the journals and of political memoirs and letters is that the methods in existence at the time the journals begin in 1547 met all the exigencies of the house and guaranteed smooth and easy passage of legislative measures until parliament entered on its modern era in 1832.

There was at times obstruction in the unreformed house of commons. In the early years of the eighteenth century it not infrequently developed about the adoption of the order to the sergeant-at-arms to bring in candles, so that business could be continued after daylight failed. Towards the close of the eighteenth century when party feeling ran high, there was speech-making that was unmistakably intended to be obstructive. But these obstructive tactics were due to special circumstances, or to conditions that were merely temporary; and generally speaking the house was not seriously disturbed by obstructive tactics before 1832. Except that it was made a rule that there could be no debate on a motion ordering the sergeant-at-arms to bring in candles, as long as the unreformed house of commons survived there were no measures to check obstruction, no changes in the rules to economize time or hasten the progress of the bill.

As long as the old representative system lasted sessions were short indeed as compared with modern sessions. Until the second and third decades of the nineteenth century there were no popular and long-sustained demands for legislation; no great measures of constitutional or administrative reform engaged the house for weeks or even months at a time, and aroused a corresponding popular interest outside the walls of St. Stephen's. Until political life in England began to quicken —that is until the long struggle with Napoleon was at an end, and the newspaper press began to be a power, there were no demands from the

Irish members. The forty-five members from Scotland were then always able to secure with ease and expedition any legislation for Scotland on which they were agreed. Few English members had any disposition to parliamentary activity in order to stand well with their constituents. Fewer still took a continuously active interest in public business. This was, moreover, the period when the governing classes were at the heyday of their power; when the principal business of the government of the day concerned defence and administration; and when the finance bill was usually the most important enactment of a parliamentary session.

Much later than 1832—until as recently as the reform act of 1867—the house of commons was sometimes described as the best club in London. This description was applied when the house took possession of its new chamber, and of the library, smoking-room and magnificent suite of committee rooms which now constitute the commons' wing of St. Stephens. About the old historic parliament house, which was built for a chapel, not for the chamber of a legislative body, there were none of the present-day conveniences of St. Stephen's. There was not even a decent dining room; and smoking was only possible in the room of the sergeant-at-arms. But if ever there was a time when the house of commons could be described as a club, it was between the Revolution of 1688 and the reform act of 1832. It was because during the greater part of this long period an atmosphere and a spirit not unlike those which characterize a first-class London club characterized the house of commons that change in the long-established order of procedure was never regarded as necessary. There was so little change in procedure between 1547 and 1832, that, as Professor Redlich agrees, "it is not affirming too much to say that the last house of commons which met in the old chapel of St. Stephen's—that of the parliament in existence at the time of the fire in 1834—was following in its main lines the procedure which the journals show to have been in use in 1547, when the house migrated from the chapter house of Westminster Abbey to the famous chapel which Edward VI then assigned to the commons for their meeting place."

In how leisurely a manner the house of commons proceeded with its work even until the end of the first half of the nineteenth century may be judged from the fact that while a bill was then as now subject to

three readings, there were in all eighteen stages before a measure originating in the commons was on its way to the house of lords, and at each of these stages a division was possible. The stages were (1) That leave be given to bring in the bill. (2) That this bill be read a first time. (3) That the bill be read a second time (on a named day). (4) That this bill be now read a second time. (5) That this bill be committed (on a named day). (6) That this bill be committed. (7) That the speaker do now leave the chair. Then after the bill had passed through committee—(8) That the report be received (on a named day). (9) That the report be now received. (10) That this report be now read. (11) That these amendments be now read a second time. (12) That the house agree with their committee in the said amendments. (13) That this bill be engrossed. (14) That this bill be read a third time (on a named day). (15) That this bill be now read a third time. (16) That this bill do pass. (17) That this be the title to the bill. (18) That Messrs. A and B do carry this bill to the lords.

New conditions in the house itself, and greatly altered conditions in the constituencies, necessarily followed from the reform act of 1832, the first general reform in the system of representation which took place in the history of parliament. The ten years which followed the enlargement of the electorate in 1832 were regarded as years of phenomenal legislative activity; and it soon became obvious that time-economizing changes in the procedure of the house of commons were necessary. Really important changes were, however, exceedingly slow in coming. Procedure reform was investigated by select committees of the house in 1837, 1848, 1854, 1861, 1869, 1871, 1878, and there were in all between 1832 and 1902 no fewer than eighteen of these committees, each of which reported in favor of reform. Yet except for some minor reforms, such as forbidding speeches on the presentation of petitions, curtailing opportunities for discussion at the first reading of a bill, doing away with about half of the eighteen stages at which there could be divisions on a bill, and giving the government a larger control over the time of the house in committee of supply, all the important reforms which have been made belong to the period between 1881 and 1907. It is only in these last twenty-six years that the house of commons has adapted its procedure to the greatly altered

political conditions which have resulted from the extensions of the franchise in 1832, 1867, and 1884, and to the constantly increasing pressure on the attention and time of parliament to which present day political activity has given rise.

The changes in the rules of the house made within this quarter of a century have been directed to three ends:—(1) to the discipline of members intent on systematic and continuous obstruction; (2) to give the government such control of the time of the house as will guarantee it a right-of-way for supply, and also for legislation which originates with the cabinet, and for which the government is responsible; and (3) to economize the time of the house. It is within this period that the private member has lost most of the opportunities for pushing a bill through the house of commons that were his until after the reform act of 1867; for nowadays unless a private member even after he has been fortunate in the ballot for time, for the second reading of his bill can induce the government to take over his measure after it has been read a second time, or to give facilities for his measure as a private member's bill after it has passed this stage, the chances are about nine to one against its going to the house of lords for its stages there.

Taking the reforms in procedure since 1881 in the order I have named, the changes intended to prevent systematic and continuous obstruction come first. It was to this end that the closure rule was first adopted in 1881. Up to 1881 the house of commons was in a position similar to that of the house of commons at Ottawa at the present time. It had absolutely no rule by the operation of which speech-making that was obviously obstructive could be checked. As soon after the reform act as 1833, in the first parliament elected on the new franchise, there was a suggestion from the radical benches that there should be a list of speakers prepared beforehand for any given debate, and also a time limit of twenty minutes for all speeches except those of a member proposing a motion or resolution, who might speak twice, and each time for half an hour. The suggestion of 1833 was not adopted by the house; and except for the standing order of comparatively recent date which admits of a member of the government introducing a bill under what is known as the ten minutes' rule, there has never been any rule restricting the duration of speeches. Even had

there been such a rule as that suggested in 1833 it would have been of little or no avail in checking the obstruction by Parnell, Biggar, and others of the Irish nationalists as it was developed between 1877 and 1881. Biggar was the originator of the obstructive tactics of this period. But it was Parnell, in the years which preceded his election as leader of the home rule party, who systematized the tactics which Biggar had found possible under the existing rules of the house; and it was Parnell who pushed these tactics to such lengths that in 1881 the Gladstone government had no course open to it but to call upon the house without delay to revise the rules.

Parnell, from the time of his election for the county of Meath in 1875, had no feeling that he belonged to the house in which he sat, spoke and voted. He was absolutely a new type in the history of representative institutions in Great Britain and Ireland. The old Irish parliament had never developed a politician whose attitude to the house of commons in Dublin was that of Parnell towards the first and second parliaments at Westminster of which he was a member. The old Scotch parliament had never developed a type at all comparable with Parnell; and there was nothing like him in the history of the unreformed house of commons. Parnell was avowedly the enemy of the house. His hand was against the hand of every member who was not of the Irish nationalist group. He was in hostility even to Butt, the Irish leader, whom he soon displaced; and as Professor Redlich observes Parnell "adopted and used obstruction not as a method of parliamentary warfare"—not to retard legislation to which he was on principle opposed—"but as a weapon with which to combat, and, if possible, to destroy, the united parliament as a constitutional device."

About the only changes in the rules made in the parliament of 1874–1880 to check Irish obstruction in the form of dilatory tactics were: one depriving members of the right to move to report progress in committee of the whole more than once in a debate on the same question; and another which threw upon the speaker or chairman of committees as the case might be, the responsibility of deciding what in any particular case was to be regarded as systematic obstruction and refusal to obey the chair. With the latter change also was given increased power to the speaker to punish members who had been "named" for obstruction.

The closure as a means of checking obstructive speaking was not adopted until 1881. In the meantime the Gladstone government had succeeded the Beaconsfield government of 1874–1880; and in the new parliament, out of 105 members from Ireland, 60 followed the lead of Parnell. It had been the hope of both sides of the house of commons that Parnell, or at least the style of warfare he had systematized in the closing sessions of the parliament of 1874–1880, was a passing phenomenon. But Parnell and his largely increased group of nationalist followers in the first session of the new parliament lost no time in developing obstruction into "parliamentary anarchy, a revolutionary struggle with barricades of speeches on every highway and by-way to the parliamentary market, hindering the free traffic which is indispensable for the conduct of business." "It was," continues Professor Redlich, in a chapter in which he describes with graphic force the parliamentary crisis of 1881 which culminated in the adoption of the closure rule, "no longer argument against argument, but force against force." Sir H. B. W. Brand, afterwards first Viscount Hampden, who was speaker from 1872 to 1884, described the obstruction of which the Irish members were guilty in the session of 1881 as "the abuse of the privilege of freedom of debate for the purpose of defeating the will of parliament;" while of the same crisis Gladstone declared that the house was struggling for the first conditions of parliamentary existence. "The house of commons," added Gladstone, "has never since the first day of its desperate struggle for existence stood in a more serious crisis—a crisis of character and honor—not of external security."

The climax which elicited these declarations from Brand and Gladstone was reached at the sitting of the house which began on the thirty-first of January, 1881. The business before the house was a bill for the protection of person and property in Ireland—in colloquial language a coercion bill. The debate was on the motion for leave to introduce the bill. Three or four days earlier, but only after a sitting which had extended over twenty-two hours, a motion had been carried to suspend the standing orders, and to give the coercion bill priority over all other business. At the memorable sitting of January 31, all the previous successes of the Parnellite group in deliberately obstructing business were outdone. The house was kept in continuous session

for forty-one and a half hours; and a deadlock that might have been interminable would have resulted had a weaker parliamentarian than Brand been in the chair. As will have been realized from what has already been said, there was at this time no rule under which the speaker could close the debate. But Brand was equal to an emergency greater in its portent than any in the history of parliament since the days of the Stuarts; and largely though not entirely on his own responsibility, he put the question from the chair. The house divided upon it, and the unprecedentedly long-drawn out sitting came to an end. In a word Brand at this crisis assumed the rôle of a parliamentary dictator.

"The dignity, the credit, and the authority of the house," he said in the memorable and dignified speech from the chair in which he justified an action for which the journals from 1547 to 1881 afforded no precedent, "are seriously threatened, and it is necessary that they should be vindicated. Under the operation of the accustomed rules and procedure the legislative powers of the house are paralyzed. A new and exceptional course is imperatively demanded; and I am satisfied that I shall best carry out the will of the house, and may rely upon its support, if I decline to call upon any more members to speak, and at once proceed to put the question from the chair. I feel assured that the house will be prepared to exercise all its powers in giving its effect to these proceedings. Future measures for ensuring orderly debate I must leave to the judgment of the house. But I may add that it will be necessary either for the house itself to assume more effectual control over its debates or to entrust greater authority to the chair."

The house of commons, by common agreement of all political parties except the Irish nationalists, promptly took action in both of the directions urged by Brand. It at once proceeded to amend the antiquated rules of procedure so as to enable it to assume more effectual control over its debates; and also to entrust the speaker with larger powers. It adopted a series of new standing orders, which as Professor Redlich correctly affirms "proclaimed a parliamentary state of siege, and introduced a dictatorship into the house of commons." Two ends were gained. The new rules which enabled the speaker to refuse any dilatory motion for adjournment during a debate, confined each

member during a debate to one speech on a motion for adjournment, and gave the speaker, on the ground of irrelevance or tedious repetition authority to direct a member to resume his seat, checked pretty effectively the kind of obstruction that the Isirh nationalist members had been developing with such zeal and success between 1877 and 1881.

Other of these new rules of 1881 gave, nominally to the house, but in practice to the government, power to determine the period within which discussion on a bill must be brought to an end. Heretofore notwithstanding the increased demands on the time and attention of parliament that had followed on the extensions of the franchise of 1832 and 1867, and the constantly increasing pressure on the government for legislation of a character which had of necessity to originate with the administration, except to some extent as regards supply, the government had been at the mercy of the house, and finally at the mercy of any small but well-organized group of members that was intent upon obstruction. What has since become known at Westminster as the guillotine—the rules under which since 1887 a time is fixed for a definite piece of house of commons work—had its origin in the extraordinary crisis brought about by Parnell and his nationalist colleagues when the coercion bill of 1881 was at its earliest stages in parliament.

Since then the house, which has absolute control over its own rules, has had occasion to give itself but little concern over new rules for the adequate discipline of members who deliberately set its usages, its traditions, and its rules at defiance; and the numerous changes in procedure made between 1881 and 1907 have had as their object either (1) an increased control by government over the order of business and the time of the house or (2) an economy of the time of the house.

The most important of the changes made for the first of these ends—that is to give the government a right-of-way and a quick passage for its business—are those which determine the number of days that shall be assigned for discussion of supply in committee of the whole, and also give the government power to determine how long the house can be employed at stages of a bill and how the time so assigned shall be divided over the clauses of a bill. The latter of these devices of procedure is that which in recent years has come to be known as closure by compartment. This device is used only for accelerating progress on government measures of first importance—bills of many clauses

and much detail, which at all their stages give rise to much contention in the house. It was by the use of this plan of closure by compartment that the education act of 1902 was carried through the house by the Balfour government; and in the session of 1908 it was brought into service by the Asquith government at committee stage of the licensing bill, which was a measure quite as contentious as the education act of 1902.

A quotation from Asquith's speech of July 17, 1908, when he moved that closure by compartment be applied to the discussion of the licensing bill will serve as an example to illustrate the working of this device —a device which obtained the final sanction of the house of commons in 1887 before the house went into committee on the criminal law amendment bill, an Irish coercion measure for which the Salisbury government of 1886–92 was responsible.

"In the motion he was proposing," reads the report of Asquith's speech of July 17, "he had endeavoured to keep in view two objects —the desire to promote the legislative work of the administration and to see that the right of free discussion was jealously safeguarded. The present motion was no less scientific in form and more considerate in operation than any of its predecessors. In allocating the aggregate time for the consideration of the bill the government was bound to have regard to the extreme desirability that the bill should reach the house of lords in the autumn sitting at a time when they could take it into reasonable consideration and have no ground for saying they had been unduly hustled or coerced. Although there were still three months in which fabricators of amendments could exercise their ingenuity there were already fifty-two pages of amendments, numbering about one thousand on the paper. Consequently with that formidable list before them it was necessary to allocate the amount of time to be given to the bill in committee and on the report stage. The house had already spent five days on the bill, and he now proposed that nineteen days should be allocated to the bill in committee, five for the report stage and one for the third reading. In his opinion that was a reasonable time. In allocating the time between the various clauses he had been at pains to do justice to the various points, and the object had been to secure that all the most important and contentious matters should be fully discussed. Two days were given to clause 1, which

provided for a statutory reduction of licenses according to population within a specified number of years. Two and a half days were given to clauses 10 and 11 relating to the provision and amount of the compensation fund, two days were given to clauses 18, 19, and 20, dealing with Sunday closing, the exclusion of children from licensed premises, and the power to attach conditions to the renewal of existing licenses, and two days were given to clauses 36 to 40, which dealt with the treatment of clubs. If a fair use was made of the time every contentious proposal was sure of free discussion. At the same time he recognized that material topics might escape discussion in the committee stage, and he therefore proposed that the allocation of the days in the report stage should be deferred until the committee stage was at an end, when the government would undertake that those important points which had either escaped discussion or had been inadequately discussed in the committee stage should have priority on the report stage. He did not think it was possible to go further in reconciling the crude and inevitable harsh requirements of a guillotine resolution with the requirements of free discussion and fairness to all parties in the house."[2]

For sixteen or seventeen years it was only when governments were closely pressed that the guillotine was brought into service in this way. It was twice used in the parliament of 1886 to 1892. It was also brought into use only twice in the parliament of 1892–1895. It was not called into service at all in the 1895–1900 parliament; and in the parliament of 1900–1906 it was resorted to in connection with the three bills—one of which was the education act of 1902, with its great concessions to the Established Church, which was so strenuously objected to by the liberals who were then in opposition. But with the incoming of the present liberal government, and with the unexampled pressure on the Campbell-Bannerman and the Asquith administrations for the enactment of measures of social reform, much more frequent use has been made of the power of the government to decree that closure by compartment shall be applied. The licensing bill is the tenth measure that has been pushed through the house of commons with the aid of this device since the first session of the parliament that was elected in

[2] *Glasgow Herald*, July 18, 1908.

January, 1906; and this more frequent use of it, developed since Professor Redlich passed his pages for the press, abundantly justifies the emphasis he places on the profound transformation in the relations of the government to the house of commons which has taken place since radical and far-reaching changes of procedure began to be made in 1881.

"Parliamentary procedure," Professor Redlich writes, in surveying the changes made in order to give the government control over the time of the house, "is the only department in which, in the constitution of state and parliament, where the old conventions and forms, silently shaped in the seventeenth and eighteenth centuries, and elsewhere studiously protected, have been ruthlessly set aside from motives of political serviceableness, and the new political division of strength has also received adequate new legal expression. The order of business in the house of commons, the actual political sovereign of the empire, has of necessity been converted from a weapon to be used against crown and government by the representative assembly of the people, into a political weapon of the ministry; but the ministry is both theoretically and practically an organ of the same house and must be so regarded. Here we have the only satisfactory clue to the comprehension of the reforms in procedure that have been taking place, towards the end in so rapid and radical a manner—the only explanation of the surrender by the representatives of the nation of the strong position occupied by them for centuries."

It is not practicable within the limits of the present article to follow in detail the changes which have been made in procedure since 1881, to economize the time of the house. They are numerous; and an exposition of much of the technique of procedure would be necessary to make them clear. Some brief notice, however, there must be of the most important of the changes made to this end in the parliamentary session of 1907; for the setting up of four large standing committees by which the committee stages of numerous bills are now taken was due to the same pressure in and out of the house of commons for legislation which made it necessary for liberal governments between 1906, and the end of the first half of the session of 1908, to adopt the device of closure by compartment in connection with ten of their bills. As Balfour reminded the house in the discussion of July 17, 1908, on

the Asquith motion applying the guillotine to committee stage of the licensing bill, there were no precedents between 1887 and 1906 for so free a use of this device as had been made since 1906.

But it has to be borne in mind that never before in the history of parliament—not even after the reform acts of 1832 and 1867—was there a house of commons so consumed with a zeal for work as that which since January, 1906, has afforded such unprecedented majorities for the Campbell-Bannerman and the Asquith governments. Reform measures enacted by liberal governments came to an end with the parish and district council acts of 1894, for which the Rosebery government of 1894–1895 was responsible. An era of reaction had preceded the general election of 1906. Social legislation, according to liberal principles, had fallen into arrears; and as Sir Courtenay Ilbert points out in his clearly-written and valuable supplementary chapter to Professor Redlich's work—the chapter covering the changes made in 1906 and 1907—the social character of the house of commons had undergone an extraordinary change as a result of the general election of 1906.

Consequent upon this change—a change more marked than in any previous house of commons, and a change which brought up the number of labor members to forty-five or fifty—when the house turned its attention to new rules to economize time it "was found to contain a smaller proportion of habitual diners out than its predecessor, a larger number who were content with a frugal and hasty meal within the precincts." "And it soon appeared," continues Sir Courtenay Ilbert, "that the members of this parliament were set on two things; first a postponement of the hour of meeting, which under the system of 1902 trenched severely on necessary morning work at the government offices, in committees, in the city or at home; and secondly on fixing the hour of rising at a time when the man of small or moderate means could make sure of getting home with the help of a public conveyance. But they were also full of zeal for work; and the problem was to combine shorter parliamentary hours with sufficient time for necessary work."

Several changes in the rules governing the hours of opening and closing the sittings and also the interval for dinner were made in 1906 with a view to shortening the working day; and in 1907, in order to

increase the working efficiency of the house, new standing orders were adopted under which four standing committees have been brought into service. To these committees, of each of which twenty members form a quorum, are referred all bills which have been read a second time. Unless the house otherwise order immediately after it has read a bill a second time and thereby accepted the principle, all bills go to one or other of these four standing committees except (1) money bills and (2) bills for confirming provisional orders issued by the board of trade or other state departments empowered to issue provisional orders. One of these committees includes all the members from Scotland; and to it go all public measures relating exclusively to Scotland. Other bills are distributed among the other three standing committees by the speaker.

By this procedure committee stage in the house for these bills is saved. The committees sit in the rooms upstairs, usually before the daily sitting of the house begins; and after reference to one of these committees the stage at which the house is next concerned with the bill is report stage—the stage between committee and third reading. Economy of the time of the house was the principal reason for making this important change; but it is claimed, and with good ground, that when the general principle of a bill has been affirmed on second reading, a reasonable chance ought to be afforded of having the provisions discussed. This chance is more assured under the standing committee procedure than under the old procedure, which, except for an interval when standing committees for bills on law and trade were tried in 1882–1883, was continuous from as far back as the reign of James I, when as the journals record, committees of the whole had their place in the stages of a bill. As a rule discussion in standing committee is more business-like and more effective than discussion in committee of the whole; and, moreover, it is obvious to anyone who is acquainted with the actual work of the house of commons that the time of the house is saved by dividing it into compartments for threshing out the details of legislative measures.

The rolls of parliament and the journals of the house of commons are silent on a number of points on which students of parliamentary history would like to be informed. When and why three readings of a bill were adopted is one of these questions that has so far eluded

research. Equally elusive are the reasons which impelled the house of commons to end the procedure of the sixteenth century of referring bills for consideration of detail to small committees which held their sessions two miles away from St. Stephen's, and to adopt the plan of taking this stage of a measure in committee of the whole. It is significant, however, that the plan adopted in 1907 of referring bills to standing committees is a reversion to that in service in the reign of Queen Elizabeth, when committee stage of a bill of which the house had affirmed the general principle was frequently taken by a select committee sitting in the hall of Lincoln's Inn, Sergeant's Inn, or the Middle Temple.

It would be interesting to follow the changes of the last twenty-five years which have so greatly curtailed the opportunities of unofficial members for carrying a bill through its several stages of the house of commons. Here, however, it can only be observed that private members' bills can only be taken at the short sittings on Friday; and that later than the fourth Friday after Whitsuntide, government business has a right of way over private members' bills.

Private members intent on legislation on their own initiative are thus nowadays, as Professor Redlich notes, "confined to a very small proportion of parliamentary time." But the loss of opportunities to which private members have had to submit does not necessarily mean that all the time once available for private members has accrued wholly to the advantage of the government. The government, it is true, is in possession of much more of the time of the house than was the case when private members had larger opportunities. But nowadays, and especially since 1906, with the increasing demand for legislation in the constituencies, and with the growing tendency of electors to insist on pledges from parliamentary candidates, the government is being compelled to take up measures which twenty or thirty years ago would have been left in the hands of private members.

It was the extent to which members of all political parties were pledged at the general election of 1906 to legislation which should put the trade unions back into the position in which they stood before the judgment of the house of lords in the Taff Vale case that made it incumbent on the Campbell-Bannerman administration to pass the trades disputes act of 1906, with its clause granting immunity of trade union

funds from judgments like that awarded to the Taff Vale Railway Company. It was the same pressure from outside also that impelled the Asquith government to change its attitude on the question of the parliamentary enfranchisement of women. Up to the session of 1908 bills for granting the suffrage to women had always been in the hands of private members, and governments had stood aloof. In the session of 1908, however, pressure in and out of the house of commons—most of it from outside the house—made it necessary that the Asquith government should on this question reconsider its position and this reconsideration resulted in Asquith undertaking to give parliamentary facilities for a measure enfranchising women when the government brings in its promised bill for adjusting a number of inequalities in the existing parliamentary electoral code. Private members have admittedly lost many of the opportunities which were formerly theirs; but this does not mean that the volume of legislation is less than it was when a comparatively large number of bills were pushed through the house of commons by private members. The general result of the change is that an increasing number of bills come before the house as government measures, and that governments today have less choice as to what bills they will adopt, and what bills they will leave to the chances of private member's exertions, than they had twenty-five or thirty years ago.

THE FEDERAL CONSTITUTION AND THE DEFECTS OF THE CONFEDERATION

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While it has frequently been stated that in framing the Constitution of the United States the federal convention of 1787 was engaged in a very practical piece of work, it never seems to have been realized how completely the members of that convention were dependent upon their own experience. With the Declaration of Independence the colonies organized themselves as States, framing and adopting constitutions. In the course of the Revolution, those States united under the Articles of Confederation. When this latter instrument of government proved to be inadequate, a fresh essay was made and our present Constitution was the result. That the Constitution was framed because of defects in the Articles of Confederation is universally accepted, but it does not seem to be recognized that experience had shown certain specific defects to exist, that the convention was called for the purpose of correcting those specific defects, and that the Constitution embodied in itself little more than the remedies for those defects.[1]

In order to appreciate this point of view, which it is believed is the true historical interpretation of the action of the federal convention in framing our Constitution, it is necessary to divest oneself of preconceived ideas and prejudices due to modern misinterpretation. First of all, it is quite misleading to judge the Articles of Confederation by present day standards of government. To do so results in condemning

[1] For example, George Ticknor Curtis misses the essential idea when he states that "it was an entirely novel undertaking to form a complete system of government * * * to be created at once, * * * for the accomplishment of the great objects of human liberty and social progress. Their chief source of wisdom was necessarily to be found in seeking *to avoid the errors* which experience had shown to exist in the Articles of Confederation." (Winsor, *Narrative and Critical History of America*, vii, p. 237.)

that instrument as utterly unfit, unworkable, and even as "vicious" in principle. Nor is it sufficient to accept the apology of John Marshall that if the confederation really preserved the idea of union until the nation adopted a more efficient system, "this service alone entitles that instrument to the respectful recollection of the American people." To the men of the time the Articles of Confederation appeared in no such light. They might not be willing to concur in Jefferson's extravagant statement that a comparison of our government with the governments of Europe "is like a comparison of heaven and hell. England, like the earth, may be allowed to take the intermediate station.[2]" But so conservative a person as Jay seemed to regard it as somewhat of a concession to admit that "our federal government has imperfections, which time and more experience will, I hope, effectually remedy."[3] Even Washington, who of all men had suffered the most from the intolerable inefficiency of congress, had a good word to say for the confederation.[4] That form of government was an experiment, an attempt to solve the problem of a confederated republic, and while no one would have claimed that it was perfect, most men would have agreed with Jefferson that "with all the imperfections of our present government, it is without comparison the best existing or that ever did exist."[5]

The Annapolis trade convention of 1786 was directly responsible for the calling of the federal convention in the following year. In the report of the commissioners, dated September 14, 1786, it is stated: "That there are important defects in the System of the Federal Government. * * * That the defects, upon a closer examination may be found greater and more numerous * * * is at least so far probable * * * as to merit a deliberate and candid discussion, in some mode, which will unite the Sentiments and Councils of all the States. In the choice

[2] Jefferson to Joseph Jones, August 14, 1787. P. L. Ford, *Writings of Jefferson*, iv, 437–439.

[3] Jay to Lord Lansdowne, April 16, 1786. H. P. Johnston, *Correspondence and Public Papers of John Jay*, iii, 188–190.

Cf. Letter to Benjamin Vaughan, September 2, 1784. *Ibid*, iii, 131–132.

[4] Letter to the Chevalier de La Luzerne, August 1, 1786. W. C. Ford, *Writings of Washington*, xi, 48–50.

[5] Letter to Edward Carrington, August 4, 1787. Ford, *Writings of Jefferson*, iv, 423–425.

of the mode your Commissioners are of Opinion, that a Convention of Deputies from the different States, for the special and sole purpose of entering into this investigation and digesting a plan for supplying such defects as may be discovered to exist will be entitled to a preference."[6]

If such was the contemporary point of view, it is evident that the wording of the resolution of congress authorizing the convention in Philadelphia, which was employed in the credentials of the delegates of so many of the States, was no mere formal phraseology; the federal convention was really called for the "express purpose of revising the Articles of Confederation" and rendering them "adequate to the exigencies of government, and the preservation of the Union."[7] It remains then to determine what these defects were "which experience hath evinced, that there are * * * in the present confederation."[8]

The situation was a critical one. In the reaction against the centralization of British colonial administration, and with the belief in the efficacy of the new State constitutions, there was danger that all central government would be dissolved. Those who were concerned for the welfare of the United States and dreamed of a great future for the nation, were anxious to better the existing condition of affairs and so remove the danger of dissolution. The topic was frequently broached in correspondence between men in all sections of the country. Some of the letters of the better known characters have been preserved to us, and from these we can ascertain fairly accurately the state of public opinion at that time.[9]

[6] *Documentary History of the Constitution*, i, p. 4. Also in Elliot, *Debates*, i, 118.

[7] *Documentary History*, i, 8–46. *Journal of the Federal Convention* (edition of 1819), pp. 5–58. Elliot, *Debates*, i, pp. 120–139.

[8] Preamble to resolution of congress.

[9] In a recent "Memorial" to congress, Mr. Hannis Taylor has put forth rather extravagant claims in behalf of Pelatiah Webster as the "Architect of our Federal Constitution." While Mr. Taylor has rendered a great service in reprinting in accessible form Webster's *Dissertation on the Political Union* (1783), students of American history were not ignorant of that pamphlet. Although some of the ideas voiced by Webster were then printed for the first time, they were by no means original with him. Most of the ideas for which he could claim originality were of no apparent influence upon the members of the federal convention of 1787; nor is it surprising, as some of them were directly in opposition to the tendency of American institutions.

The earliest and most frequent complaint is that of the "lack of power" in congress. The phrase is rather indefinite, and many of those who used it were evidently not clear in their own minds exactly as to what they meant by it. The central government was impotent, and therefore it must be given power; but some said that this meant adequate financial support, others that it was the right to use force, and others still that the individual States must be restrained from entrenching upon the rights of congress. Other early criticisms of the confederation were similarly vague, and they might almost be termed desultory. But as time passed and interest increased, more careful thought was given to the subject, with a resultant increase in number and definiteness of the defects noted. When the possibility of a convention for revising the Articles of Confederation grew into a probability and finally was definitely arranged for, those who were most interested made careful study of existing conditions, and the result of their investigations is really surprising.

The following is a list of defects of the government under the Articles of Confederation, with remedies suggested, compiled from the writings of the members of the federal convention prior to the time of meeting in Philadelphia, namely, May 14, 1787:

DEFECTS OF THE CONFEDERATION AND REMEDIES SUGGESTED

I. Individual States exercised too great power—
   1. in matters purely federal, e. g., commerce, finance, Indian affairs, compacts between States, and foreign relations. Due partly to limited field of congressional action, partly to confusion of State and federal powers, and partly to encroachment of States upon federal authority.
   2. in interstate relations—States trespassed upon one another's rights.
      A. The central government should be given the right and power of coercion, with a negative, or some check upon State legislation.

II. Lack of power of central government—
   1. to enforce its demands.
      B. The central government should act directly upon the people with the power to compel obedience.
   2. in financial matters,
      a. to obtain an adequate revenue, and to preserve the credit of the United States and of the individual States.
         C. The central government should be vested with competent powers of direct and indirect taxation; and a more suitable method of distributing the burden should be established.

b. to maintain a stable currency.

D. Restrictions upon issues of paper money were necessary, and a uniform currency was desirable.

c. to establish a national bank.[10]

3. to regulate trade and commerce.

E. The central government should be vested with adequate powers over trade and commerce, both foreign and domestic.

4. in foreign relations,—as shown by infractions of treaties, disregard of the law of nations, and the contempt inspired abroad.

F. The central government should have complete sovereignty in foreign affairs.

5. to define and punish piracy or felony on the high seas.
6. to maintain an effective army and navy to protect against (*a*) internal disorders, and (*b*) external dangers.

G. The militia should be under some central control; some better method of apportioning quotas of troops should be devised; and the authority of the central government should be effective in time of peace as well as of war.

7. to define and punish treason.
8. to hold and govern western lands.
9. to maintain an effective postal service.
10. to make internal improvements.
11. to pass laws requiring uniformity, on such subjects as naturalization, bankruptcy, education, inventions and copyright.
12. to establish and exercise jurisdiction over a permanent seat of government.

III. Defective organization:

1. Combination of legislative, executive and judicial powers in one body.
2. Lack of a separate executive.

H. There should be a separate executive, which should be able to take the initiative, capable of action in foreign affairs, and with or without a council might have the right of veto and the power of appointment.

3. Lack of an organized federal judiciary.

I. There should be an organized federal judiciary, which should have, in addition to that contemplated in the Articles of Confederation, jurisdiction in matters relating to foreigners or people of other States.

4. Of Congress.

a. Composition.

J. There should be two houses, and a council of revision; the people should be directly represented; the number of members should be greater; and the best men should be attracted.

b. Unsatisfactory method of voting,—including obligations to voting by States, to requiring nine votes, and to confusion in some cases whether seven or nine votes were necessary.

c. Sessions were indefinite, and too frequently shifted from place to place.

[10] It is interesting to notice that Jefferson and Madison mention this as a defect.

d. Attendance was voluntary; terms of office and compensation of members were unsatisfactory; and members were not prohibited from holding other offices.

5. Lack of a guarantee to the individual States of their constitutions and laws.
6. Inadequate provision for the establishment of new States and their admission into the Union.

IV. Deficient instrument of government.

1. Ineffective.

K. The instrument of government should be ratified by the people, and should be superior to State constitutions.

2. Difficulty of amendment.

L. The instrument of government should be capable of amendment by less than the whole number of States.

3. Obscurity of the text—rendering the meaning uncertain in many cases.

An examination of this list of defects reveals two very obvious limitations. In the first place, there is no discrimination between the defects noted, with reference to their relative importance: Some defects were more serious than others, and must of necessity be remedied if the new government was to be effective; the correction of others was more or less optional. Some defects might be mentioned by a single writer, and but once in his whole correspondence; others might be mentioned by nearly everyone, and not once, but many times. For the purpose of this argument, however, it is sufficient that a defect should have been known to any delegate in attendance at Philadelphia; and the material has therefore been arranged solely with reference to simplicity and convenience. In the second place, it is quite possible that when such a man as Madison, or Hamilton, should attempt to point out the defects of the confederation, he would naturally include everything requisite to good government that was lacking in the Articles of Confederation. The objection is immediately disposed of by the simple fact that the list of defects here given is much more comprehensive than those which are noted by any one person. Even Madison's summary—prepared shortly before the convention met, after a careful study of all the confederations known to history, and with a long experience in the congress of the confederation—only approximates it in completeness.[11] Moreover, the omissions in the present list are very significant.

It may be assumed, then, that this list roughly represents the sum total of the members' knowledge of the defects of the confederation

[11] *Documentary History*, iv, 126–165.

when the federal convention assembled in Philadelphia. As the convention was called for the purpose of rendering the Articles of Confederation adequate to the exigencies of government, it is evident that the task which was set before the members was to remedy the defects included in this list. To show that the members themselves regarded this as their specific task, and to show how far they were successful in accomplishing their task, are the purposes of this article. That some members of the convention saw that it was impossible by any series of amendments, no matter how extensive, to render the Articles of Confederation adequate—that, in other words, a new instrument of government was necessary—is immaterial to the present discussion. All that is asked is that it be recognized that a set of definite defects was known to the members of the convention at the time they met, and that it was the task of the convention to remedy those defects.

The first days of the convention were occupied with the necessary details of organization. As soon as these were completed, Randolph "opened the main business" on May 29, by offering for the consideration of his fellow-members a series of resolutions which had been prepared by the delegates from Virginia, and is commonly known as the "Virginia Plan" or the "Randolph Resolutions." In introducing his subject, Randolph pointed out some of the main defects in the existing government, and stated that the resolutions he presented were intended to remedy those defects.[12] In the course of the debate that followed, member after member gave voice to the same idea. Pierce said that the "compact * * * heretofore formed is insufficient. We are now met to remedy its defects."[13] Sherman said that "the object of our convention is to amend these defects."[14] Wilson referred to the Articles of Confederation and added, "to correct its vices is the business of this convention."[15] Madison was the most competent of all to speak, and he expressed the same sentiment repeatedly: "It was incumbent on us * * * to frame a republican system * * * as

[12] *Documentary History*, iii, 13–16; Yates, *Secret Proceedings* (edition of 1821), p. 97; McHenry, in *American Historical Review*, xi, 596–598.

[13] Yates, *Secret Proceedings*, pp. 187–188.

[14] *Ibid.*, p. 195.

[15] *Documentary History* iii, p. 91.

will control all the evils which have been experienced."[16] Again, "We ought * * * to * * * be equally careful to supply the defects which our own experience had particularly pointed out."[17] And on June 30, "Experience shows that the confederation is radically defective, and we must in a new national government guard against those defects."[18]

The opposition, to the evident nationalizing tendency of the convention evinced in the Virginia plan as modified in two weeks' sessions of the committee of the whole house, took definite shape in the presentation of the New Jersey plan on June 15. It was claimed that the latter was more nearly in accord with the powers of the convention as expressed in the resolution of congress and the credentials of the delegates.[19] But Madison voiced the sentiments of the majority when "he stated the object of a proper plan to be two-fold. (1) to preserve the Union. (2) to provide a government that will remedy the evils felt by the States both in their united and individual capacities." He then proceeded to show that in these respects the New Jersey plan was unsatisfactory.[20] On the conclusion of this speech—with seven States in the affirmative, three in the negative, and one divided—the convention declared itself in favor of the Virginia plan as modified.[21]

With the fundamental principles of a new constitution thus determined, the convention proceeded to work out its details. Step by step, with compromises necessary at every point, but with ever increasing unanimity, a constitution was finally drafted which was perfectly satisfactory to no one, yet which was adopted by an overwhelming majority. As we trace this document through the various stages of its development, we observe that one by one the defects noted in our list were brought by various delegates before the convention,[22] until all had been under consideration. The question then arises as to how far these defects were provided for in the completed Constitution.

[16] *Documentary History*, iii, p. 74.

[17] *Ibid.*, iii, p. 216.

[18] Yates, p. 194

[19] See statements of Lansing and Paterson on June 16. (*Documentary History*, Yates, *et al.*)

[20] *Documentary History*, iii, 151–162.

[21] *Ibid.*, 162.

[22] Note, for example, proposals of Madison, Gouverneur Morris, and Pinckney on August 18 and 20.

If we take our list of defects and remedies and go through it point by point, we notice: (1) the only "check upon State legislation" (A) is the provision in article vi that State constitutions or laws shall not interfere with the "supreme Law of the Land"—in other words, that the federal judiciary is substituted for congress as the organ to determine the rightfulness of State legislation; (2) that no specific power is granted "to establish a national bank (II, 2c); nor (3) to make internal improvements (II, 10); nor (4) to legislate upon the subject of education (II, 11); and finally, that in place of a council of revision (J), the executive is given the right of veto subject to be overruled by a two-thirds vote of both houses of congress. With these few exceptions, every item in the list is accounted for.

If we inquire, on the other hand, as to what was embodied in the Constitution that did not arise out of the effort to correct the specific defects noted, a still more surprising result is obtained. It must be remembered that the completed Constitution necessarily included many details that would not be mentioned in any enumeration of defects of the old government, and also that the compromises, which were found necessary at almost every stage of the convention's proceedings, had in some cases produced unforeseen results. But bearing these two factors in mind, a careful examination of the Constitution and of the work of the federal convention shows that there is nothing in the completed document which did not arise from the effort to correct the specific defects noted, with the single exception of the provision regarding impeachment,[23] and this was such a natural result from the powerful executive which had been established, that it is hardly worthy of record. When once prescribed for the president, it was but a step to include the "Vice President and all civil Officers." This was as natural an action as it was in article i, section 9, to place limitations upon the extensive powers of congress in order to prevent abuse.

It has long been recognized to how great an extent the framers of the Constitution were indebted to the constitutions of the individual States for the specific provisions of the federal instrument;[24] But that now

[23] Article ii, section 4.

[24] Note especially Alexander Johnston, The First Century of the Constitution, in the *New Princeton Review*, September, 1887, and J. H. Robinson, Original and Derived Features of the Constitution, in *Annals of the American Academy*, October, 1890, i, 203–243.

takes on a deeper significance. Just as the resolving of the list of defects into its component parts shows that no one of the critics had gone outside of his own experience or observation, so the members of the federal convention were dependent upon their experience under the State constitutions[25] and the Articles of Confederation. Again making due allowances for the compromises, it will be found that every single provision of the federal Constitution can be accounted for in American experience between 1776 and 1787.[26] However much the members of the convention may have prepared themselves by reading and study,[27] and however learnedly they might discourse upon governments, ancient and modern, when it came to concrete action they relied solely upon what they themselves had seen and done. John Dickinson of Delaware expressed this very succinctly in the course of the debates, when he said: "Experience must be our only guide. Reason may mislead us."[28]

If, then, our federal Constitution was nothing but the application of experience to remedy a series of definite defects in the government under the Articles of Confederation, it must needs be that in the short space of time the confederation had existed experience would not and could not cover the whole range of governmental activities. Reference is not made here to contingencies impossible to foresee, such as the introduction of steam and electricity, with their attendant revolutions in trade and commerce presenting questions of sufficient scope and interest as apparently to require the intervention of the nation's power; nor to such a condition as rendered advisable federal action in order to carry out the work of irrigation on a large scale; but to such matters

[25] It may be worth while, incidentally, to call attention to the fact that the New York constitution of 1777 exercised a far greater influence than that of any other State.

[26] Madison in the *Federalist* (Nos. 40 and 45) stated: "The truth is, that the great principles of the Constitution proposed by the convention may be considered less as absolutely new, than as the expansion of principles which are found in the Articles of Confederation." * * * "If the new Constitution be examined with accuracy and candor, it will be found that the change which it proposes consists much less in the addition of *New Powers* to the Union, than in the invigoration of its *Original Powers*.

[27] See exchange of letters between Madison and Washington preceding the convention.

[28] *Documentary History*, iii, 519.

as it would seem inexplicable not to define in an instrument of government, if the attempt had been made to frame a logical and comprehensive constitution.

The lack of power to establish a national bank was one of the weaknesses charged against the government of the confederation, and one that was not specifically provided for in the new Constitution. Its importance had not yet been realized. Hamilton's genius, it is true, was able to wrest its concession from a reluctant congress, but it required the disastrous financial situation in the War of 1812 to awaken the nation to the necessity of some such institution. In the same way, it was the unexampled spread of population beyond the Alleghanies, and the consequent necessity of better means of transportation, that brought the opposition to acquiesce in a national system of internal improvements, which Washington had advocated long before the federal convention met. The embargo of 1807[29] and the protective tariff of 1816 afford further illustrations of matters outside the experience of the confederation, and not having been expressly provided for in the new instrument raised many doubts as to their constitutionality. Gouverneur Morris foresaw the acquisition of Louisiana and Canada and embodied in the Constitution a guarded phrase which would permit of their retention as "provinces, and allow them no voice in our councils." "But," he continued, "candor obliges me to add my belief that, had it been more pointedly expressed, a strong opposition would have been made."[30] Whether or not the people of the United States in 1803 would have accepted Morris's point of view and granted the power he had advocated in 1787, the incident shows the subterfuges to which a far-sighted member of the federal convention was forced to resort in order to provide for possible contingencies beyond the ken of his fellow delegates.

Or again, take the great issue of States rights as exemplified in the concrete cases of nullification and secession. It probably would have been inexpedient to have forced these issues in 1787, when the fate

[29] Joseph Story: "I have ever considered the embargo a measure which went to the utmost limit of constructive power under the Constitution." (Story's *Life of Story*, i, 185; cited in Henry Adams, *History of the United States*, iv, 270–271.)

[30] See Farrand, Compromises of Constitution, *American Historical Review*, ix, 482–484.

of any sort of a central government was doubtful. But these subjects were probably not even seriously considered at that time; they certainly were not mentioned in the convention. Yet does any one imagine that if Madison, or Wilson, or Hamilton had been permitted to frame a logical or consistent instrument of government, a constitution would have resulted which would not have covered such contingencies?

Our federal Constitution is not a logical piece of work. No document which originated by any such process as has been traced in this article could be logical or even consistent. The very unsatisfactory results that have come from the various attempts to make a so-called "analysis" of the document for classroom use are an indication of this. From the very nature of its construction the Constitution defies analysis upon a logical basis. It is somewhat nearer the truth to speak of the Constitution as "a bundle of compromises." But that is only a half-truth, and leaves much to be explained. Our Constitution was a practical piece of work for very practical purposes. It arose from the necessity of existing conditions. It was designed to meet certain specific needs, and when those were provided for, the work was completed. John Quincy Adams well described it when he said that the Constitution "had been extorted from the grinding necessity of a reluctant nation."[31]

The framers of the Constitution were determined that the new instrument of government should be effective. It was accordingly provided that it should be the "supreme Law of the Land," that is, enforceable by the courts; in this enforcement, the government was to be backed by the power of armed might; and the federal Constitution was to be superior to the State constitutions, with all officers "both of the United States and of the several States * * * bound by Oath * * * to support this Constitution."[32] This determination finds, perhaps, its best expression in the modification of the preamble in the last days of the convention's sessions. Up to that time the various drafts had read, "We the people of the States of New Hampshire, Massachusetts, Rhode Island," etc. But the committee on style changed this and the

[31] Cited by Nicholas Murray Butler in Johns Hopkins University Studies, Fifth Series, p. 258.

[32] McLaughlin, *Confederation and Constitution*, chap. 15.

convention approved the change, so that it declares:—"We the people of the United States * * * do ordain and establish this Constitution."[33] Not a treaty, nor an agreement between sovereign states, but a law enacted by the highest of all law-making bodies—the people.

In the preface to the *Frame of Government of Pensilvania*, in 1682, William Penn quaintly said:—"Governments, like clocks, go from the motion men give them; and as governments are made and moved by men, so by them they are ruined too. Wherefore governments rather depend upon men than men upon governments."[34] However radical the differences between the Articles of Confederation and the federal Constitution, however sweeping the provisions of the later document and however carefully they might be worded, the most potent factor in rendering the new instrument of government effective was the changed attitude of the American people. In place of opposition or distrust, we find welcome and support for the new government. And this, too, was the result of experience—the experience of a few years of poor government, amounting practically to misgovernment, under the Articles of Confederation.

[33] *Documentary History*, iii, 444, 458, 720.
[34] Poore, B. P., *Federal and State Constitutions* (2d ed.), ii, 1519.

THE FIRST STATE CONSTITUTIONAL CONVENTIONS, 1776-1783

W. F. DODD

The distinction between constitutions and statutes is a fundamental one in American constitutional law, but it is a matter of surprise that no one has yet attempted to discuss this distinction in its historical origins. Brinton Coxe in his *Judicial Power and Unconstitutional Legislation* has traced the development of the doctrine that statutes in conflict with the constitution may be declared invalid by the courts. Judge J. A. Jameson in his *Treatise on Constitutional Conventions* has given a brief account of the adoption of the first State constitutions; but no one has yet studied the adoption of these constitutions in order to find what were the theories of their framers as to the distinction between constitutions and statutes.

By the term constitution, as used both in England and America before the Revolution, was understood the general and more permanent principles upon which government is based. The term was used on both sides of the Atlantic to signify something superior to legislative enactments, and the principles of the constitution were appealed to as beyond the control of the British parliament.[1]

Closely associated with this idea of a constitution beyond the power of legislative alteration, was the theory of the social contract; that is, that government is in some way based upon contract between the people and the state. By the separation of the colonies from Great Britain it was conceived that this contract was dissolved; as expressed by a meeting of New Hampshire towns: "It is our humble opinion, that when the Declaration of Independency took place, the

[1] The term "constitution" was also used to a certain extent in the colonies to designate a written form or instrument of government. *See* Md. Archives, vii, 61. I am indebted to Dr. Bernard C. Steiner for this reference.

Colonies were absolutely in a state of nature, and the powers of government reverted to the people at large. * * *"[2]

For practically the first time in history, the people of the Revolutionary period were brought in contact with the problem of establishing written constitutions, of framing for themselves the permanent social contract upon which their political institutions should be based. It is the purpose of this paper to indicate the part which the people took in framing constitutions; the manner in which they by their procedure distinguished between constitutions and statutory enactments. In considering this question it should be remembered that the Revolution was a period of civil war, and that the procedure in adopting constitutions may in some cases have been different from what it was, had the people been establishing governments in a time of peace.

The New Hampshire provincial congress in November, 1775, at the time of providing for the election of members to a new congress, voted that the precepts sent to the several towns should contain the request that "in case there should be a recommendation from the Continental Congress for this Colony to Assume Government in any way that will require a house of Representatives, That the said Congress for this Colony be Impowered to Resolve themselves into such a House as may be recommended, and remain such for the aforesaid Term of one year."[3] The Continental congress, on November 3, 1775, recommended "to the provincial Convention of New Hampshire, to call a full and free representation of the people, and that the representatives, if they think it necessary, establish such a form of government, as, in their judgment, will best produce the happiness of the people, and most effectually secure peace and good order in the province, during the continuance of the present dispute between G[reat] Britain and the colonies."

The provincial congress of New Hampshire, elected with power to resolve itself into a house of representatives, took such a step and adopted a temporary constitution on January 5, 1776.[4] This action was not taken without opposition. The instructions to the repre-

[2] N. H. State Papers, viii, 425.
[3] N. H. Provincial Papers, vii, 660.
[4] N. H. State Papers, viii, 2.

sentatives of Portsmouth had declared in favor of a continuance of government by the congress.[5] Petitions from a number of towns were presented against the taking up of government, and several members of the house also protested against this action.[6] Portsmouth protested on January 10, 1776, that "We would * * * have wished to have had the minds of the People fully Taken on such a Momentous Concernment, and to have Known the Plan, before it was Adopted, & carried into Execution, which is Their Inherent right;" and the instructions given to their representatives in the succeeding July provided specifically "that they nor any other Representative in future shall consent to any alteration, Innovation or abridgement of the Constitutional Form that may be adopted without first consulting their constituents in a matter of so much importance to their Safety."[7]

The objections of the eastern towns of New Hampshire were based principally upon opposition to such a pronounced step towards independence, or upon doubts as to the expediency of such a step; but the towns of the county of Grafton, in the New Hampshire Grants, objected both to the method of adoption and to the substance of the constitution. Several towns refused to elect representatives because "No Bill of Rights has been drawn up, or form of Government Come into, agreeable to the minds of the people of this State, by an Assembly peculiarly chosen for that purpose, since the Colonies were declared independent of the Crown of Great Britain."[8] Indeed the agitation in the western towns became so serious that it was necessary for the assembly to send a committee to conciliate that section, and to assure its inhabitants that the form of gavernment adopted in 1776 was purely temporary.[9]

The proceedings of this committee with the meetings of the towns of the New Hampshire Grants are of interest as bearing upon the earlier steps leading to the adoption of a permanent form of government in New Hampshire. At a meeting of the town of Walpole in

[5] N. H. Provincial Papers, vii, 701.
[6] N. H. State Papers, viii, 14–17, 33.
[7] *Ibid.*, viii, 301.
[8] *Ibid.*, viii, 425. See also *Ibid.*, viii, 421–425.
[9] *Ibid.*, viii, 442, 450.

February, 1777, it was resolved that "a new and lasting Plan [of government] is necessary to be formed. And if the necessary business of the State forbid the dissolution of the present Assembly, and calling a new one for the purpose aforesaid, that the present Assembly issue Precepts to the several incorporated Towns within the State for such a Number of Delegates to be proportioned to the several Counties within the State as they, the Assembly, shall think proper for the express purpose of the Organization of Government; that a plan thereof be sent to each Town for their [its] approbation; Which, being approved of by a Majority, shall be the Constitutional Plan of Government for this State * * *"[10] The convention of the united committees of the towns of the New Hampshire Grants, which met at Hanover in June of the same year, insisted that "the further establishing a permanent Plan of Government in the State be submitted to an Assembly that shall be convened * * * for that purpose only."[11]

The subsequent constitutional procedure of New Hampshire followed the lines laid down in the petitions and protests of the western towns. The house of representatives voted on December 27, 1777, "that it be recommended to Towns Parishes & places in this State, if they see fit, to instruct their Representatives at the next session, to appoint & call a full & free Representation of all the people of this State to meet in Convention at such time & place as shall be appointed by the General Assembly, for the sole purpose of framing & laying a permanent plan or system for the future Government of this State."[12] The council took no action upon this matter, but many of the members of the next assembly were instructed to call a convention, and the two houses voted in February, 1778: "That the Honble the President of the Council issue to every Town, Parish & District within this State a Precept recommending to them to elect and choose one or more persons as they shall judge expedient to convene in Concord in said State, on the tenth day of June next. * * * And such System or form of Government as may be agreed upon by Such Convention being printed & sent to each & every Town, Parish & District in this State for the approbation of the People,

[10] N. H. Town Papers, xiii, 603. See also *Ibid.*, xi, 23; xii, 57.
[11] *Ibid.*, xiii, 763.
[12] N. H. State Papers, viii, 757.

which system or form of government, being approved of by three-fourth parts of the Inhabitants of this State in their respective Town meetings legally called for that purpose, and a return of such approbation being made to said Convention & confirmed by them, shall remain as a permanent system or Form of Government of the State, and not otherwise."[13] The convention called by virtue of this vote adopted a constitution in June, 1779, which was rejected by the people.

The procedure in calling the second constitutional convention of New Hampshire was the same as that pursued in calling the first convention. The precepts issued in October, 1780, for the election of members to the next assembly contained the following clause: "It is also recommended to empower such Representative to join in calling a Convention to settle a plan of Government for this State."[14] When the new assembly met a joint committee was almost immediately appointed, which recommended another convention, and the resolve of April, 1781, provided that the constitution should be approved "by such number of the Inhabitants of this State in their respective town meetings legally called for that purpose, as shall be ordered by said Convention. * * * And if the first proposed System or form of Government should be rejected by the People, that the same Convention shall be empowered to proceed and make such amendments and alterations from time to time as may be necessary—provided always that after such alterations, the same be sent out for the approbation of the People in the manner as aforesaid."[15] In sending its first constitution to the people, in September, 1781, this convention provided that a two-thirds vote should be necessary for its adoption.[16] The constitution was rejected as was also a revised copy of it submitted by the same convention in August, 1782. The convention met again in June, 1783, and sent out another constitution which was agreed to by two-thirds of the voters.[17]

The development of the constitutional convention in Massachusetts was similar to that of New Hampshire, but of a slightly later

[13] N. H. State Papers, viii, 775.
[14] *Ibid.*, viii, 874.
[15] *Ibid.*, viii, 894, 897.
[16] N. H. Town Papers, ix, 877.
[17] *Ibid.*, ix, 883–895, 903–919.

date. The resumption of the charter in 1775 was accomplished by the provincial congress, without any reference to the consent of the people. By a resolve of September 17, 1776, the house of representatives recommended that the towns authorize their representatives to form a constitution. Many towns granted the requested authorization, but Boston[18] and several others refused to do so, and the general court did not at that time carry the matter further. The request was repeated on May 5, 1777, and a sufficient number of towns took the desired action. Such action was uniformly coupled with the demand that the constitution framed by the members of the general court should afterwards be submitted to the towns for approval. Some of the towns opposed the formation of a constitution by the regular legislative body. The Boston town meeting accepted the report of a committee which said: "We apprehend this Matter (*at a suitable time*) will properly come before the people at large to delegate a *select number for that purpose & that alone.* * * *"[19]

The Massachusetts assembly resolved itself into a constitutional convention on June 17, 1777, and on February 28, 1778, adopted a constitution, which was published several days later. This constitution was submitted to the freemen in their town meetings, and it was suggested that they empower their representatives in the next general court to establish the constitution, if it should have been approved by the people.[20] The proposed constitution was rejected by the people for various reasons, among which an important one was that it had not been framed by a body chosen for the one purpose of forming a constitution.[21]

On February 20, 1779, the general court resolved that those qualified to vote for representatives should be requested to express their opinion as to the desirability of forming a constitution, and as to whether they would empower their representatives to call a convention for the sole purpose of framing such a constitution.[22] Both

[18] Boston Town Records, 1770–1777, p. 247.

[19] *Ibid.*, 284. Resolves of Mass., May 5, 1777.

[20] Resolves of Mass., March 4, 1778.

[21] Cushing. *Transition from Provincial to Commonwealth Government in Mass.*, 190, 214–226. The present account of the constitutional development of Massachusetts is based largely upon Dr. Cushing's monograph.

[22] Resolves of Mass., February 20, 1779.

propositions were carried, and the general court in June, 1779, resolved that elections should be held for a convention to meet at Cambridge on the first day of the succeeding September. The next house of representatives was to establish the constitution, if it should be ratified by two-thirds of the free male inhabitants, over twenty-one years of age, acting in town meetings called for that purpose.[23] The constitution of 1780 was adopted by this body and ratified by the people.

In all of the other States, except South Carolina, Virginia and New Jersey, the procedure was practically the same. In each case the constitution was framed by a body exercising general legislative power, but which had direct authority from the people to form a constitution. But it will be necessary to present the evidence upon which the foregoing statement is based.

In May, 1776, the New York provincial congress discussed the recommendation of the Continental congress that a government should be organized, appointed a committee to consider the matter, and accepted its report, which said "that the right of framing, creating or new modeling civil government, is, and ought to be in the people. * * * That doubts have arisen, whether this Congress are invested with sufficient authority to frame and institute such new form of internal government and police. That those doubts can and of right ought to be removed by the good people of this colony only." The committee recommended that a new congress be convened "with the like powers as are now vested in this congress, and with express authority to institute and establish such new and internal form of government as aforesaid."[24] Such action was taken and the delegates who met in convention at White Plains on July 9, 1776, had express authority from their constituents to form a constitution. In Kings county, where new elections were not held, the county committee instructed the member of the former congress to attend, but the convention voted that he should not act in the matter of forming a government.[25]

So in Maryland the provincial convention resolved on July 3,

[23] Resolves of Mass., June 21, 1779.

[24] Journals of the Provincial Congress of N. Y., i, 462.

[25] *Ibid.*, i, 572.

1776: "That a new convention be elected for the express purpose of forming a new government, by the authority of the people only, and enacting and ordering all things for the preservation, safety, and general weal of this colony."[26] That some of the people of this State took a lively interest in the organization of government is shown by the fact that B. T. B. Worthington, Charles Carroll, barrister, and Samuel Chase, the two latter undoubted leaders and members of the committee to prepare a form of government, resigned from the convention because they had received "instructions from their constituents, enjoining them, in framing of a government for this State, implicitly to adhere to points in their opinion incompatible with good government and the public peace and happiness."[27] Although there was no formal reference of the first constitution of Maryland to the people, the action taken by the convention on September 17, 1776, probably served a similar purpose. The committee had reported to the convention a proposed bill of rights and constitution; action upon this report was postponed until September 30, and it was resolved "that the said bill of rights and form of government be immediately printed for the consideration of the people at large, and that twelve copies thereof be sent without delay to each county in the State."[28]

The North Carolina provincial congress had the framing of a constitution under consideration in April, 1776, but the members were unable to agree, and adopted a temporary form of government.[29] It seems to have been generally understood that the consideration of the matter would be renewed by the next congress, and the council of safety on August 9, 1776, resolved "that it be recommended to the good people of this now Independent State of North Carolina to pay the greatest attention to the Election to be held on the fifteenth day of October next, of delegates to represent them in Congress, and to have particularly in view this important consideration. That it will be the Business of the Delegates then Chosen not only to make Laws for the good Government of, but also to form a Constitution

[26] Proceedings of the conventions of Md., 184.
[27] *Ibid.*, 222, 228.
[28] *Ibid.*, 258.
[29] N. C. Colonial Records, x, 498, 579.

for this State, that this last as it is the Corner Stone of all Law, so it ought to be fixed and permanent."[30]

Mecklenburg county drew up an elaborate set of instructions for its members to the provincial congress, which were also adopted in part by Orange county. These instructions are of sufficient interest to be quoted almost in full, in so far as they relate to the present subject. The following principles were to be recognized in framing a bill of rights and constitution: "1st. Political power is of two kinds, one principal and superior, the other derived and inferior. 2d. The principal supreme power is possessed by the people at large, the derived and inferior power by the servants which they employ. * * * 4th. Whatever is constituted and ordained by the principal supreme power can not be altered, suspended or abrogated by any other power, but the same power that ordained may alter, suspend and abrogate its own ordinances. 5th. The rules whereby the inferior power is to be exercised are to be constituted by the principal supreme power, and can be altered, suspended and abrogated by the same and no other." The delegates were finally instructed to "endeavor that the form of Government when made out and agreed to by the Congress shall be transmitted to the several counties of this State to be considered by the people at large for their approbation and consent if they should choose to give it, to the end that it may derive its force from the principal supreme power."[31] The congress met on November 12, 1776; on Friday, December 6, the committee reported the form of a constitution and it was ordered, "That the same be taken into consideration on Monday next; that one copy of the said Form of a Constitution be furnished for each District in this State, and one copy for each County." The constitution was adopted on December 18, 1776.[32]

On July 27, 1776, the assembly of Delaware took under consideration the resolves of the Continental congress of May 10, and decided that a new government should be formed and, "That it be recommended to the good people of the several Counties in this Government to choose a suitable number of Deputies to meet in Convention, there

[30] N. C. Colonial Records, x, 696.
[31] *Ibid.*, x, 870 *a-f*.
[32] *Ibid.*, x, 954, 974, 1040.

to order and declare the future form of government for this State."[33] The convention of Delaware was not expressly limited to the one task of forming a constitution and did not consider its powers so restricted. While in session it took such other actions as the assembly might have taken had it been in session at the same time.[34]

By the Pennsylvania charter of privileges of 1701 it was provided that the charter might be altered by the governor and six-sevenths of the assembly. When the Continental resolve of May 10, 1776, was taken under consideration, the assembly, acting as nearly as possible in pursuance of the charter, assumed that it had power to establish a new form of government. But the assembly was under the control of the conservatives, and the radical element determined to prevent its exercising this power. The Philadelphia committee called a conference of county committees, which met on June 18, 1776, and resolved: "That it is necessary that a provincial convention be called by this conference for the express purpose of forming a new government in this province, on the authority of the people only."[35] The convention which met in pursuance of this call framed the Pennsylvania constitution of 1776. During the whole period of its existence it also acted as the regular legislative body of the State.

The Georgia provincial congress discussed the subject of forming a government, in March, 1776, but its members alleged that they had no authority from their constituents to enter upon the matter, and agreed to submit the subject for the consideration of the people;[36] a temporary form of government was adopted. In the call issued for a convention to meet at Savannah in October, 1776, President Bulloch enjoined upon the people the "necessity of making choice of upright and good men to represent them in the ensuing convention—men whose actions had proved their friendship to the cause of freedom, and whose depth of political judgment qualified them to frame a

[33] Force, *American Archives*, Fifth Series, i, 617.

[34] Proceedings of the convention of the Delaware State. The proceedings of this convention were published contemporaneously by James Adams at Wilmington. Force, Fifth Series, ii, 285.

[35] Journals of the House of Representatives of Pa., 1776–1781, p. 36.

[36] McCall, *History of Georgia*, ii, 75.

constitution for the future government of the country."[37] The constitution of 1777 was adopted by this body.

The first constitution of Vermont was framed by a convention called in pursuance of a circular of a previous convention, of June, 1777, recommending "to the freeholders and inhabitants of each town in this State to meet at some convenient place in each town on the 23d day of this instant June and choose delegates to attend a general convention at the meeting-house in Windsor * * * to form a constitution for said State."[38] Ira Allen says that Bennington objected to this constitution because it was not ratified by the people.[39]

The first constitutions of South Carolina, Virginia and New Jersey were adopted by provincial congresses chosen for the purpose of directing the Revolutionary movement against Great Britain, and without any specific authorization from the people to take such action. Yet in both South Carolina and Virginia the question was raised as to the power of the provincial congress to adopt a constitution, and was decided in the affirmative, largely, perhaps, upon the argument of expediency.

In February, 1776, a committee appointed by the provincial congress of South Carolina reported a constitution, but action upon it was opposed by many members, "some of them because they were not prepared for so decisive a measure—others, because they did not consider the present members as vested with that power by their constituents."[40] This opposition was not sufficiently strong to prevail, and the constitution was adopted.

It has frequently been asserted that the South Carolina constitution of 1778 was passed as an ordinary act of the legislature, but what evidence there is goes to indicate that the members of the legislature were authorized by their constituents to adopt a constitution. Defects seem almost immediately to have been discovered in the constitution of 1776. A committee of the assembly, appointed in October, 1776, reported certain alterations which it considered expe-

[37] Stevens, *History of Georgia*, ii, 297, quoting from President Bulloch's circular.
[38] Records of the Council of Safety and the Governor and Council of Vt., i, 58.
[39] Allen, *History of Vermont*, 108–110 (Collections Vt. Hist. Soc., i, 391).
[40] Drayton, *Memoirs of the American Revolution*, ii, 172, 176.

dient.[41] Ramsay says that the elections of October, 1776, were "conducted on the idea that the members chosen, over and above the ordinary powers of legislators, should have the power to frame a new constitution suited to the declared independence of the State."[42] This matter was immediately taken up by the new legislature. Richard Hutson wrote to Isaac Hayne on January 18, 1777: "We yesterday finished the difficult Reports of the committee on the Constitution with regard to amendments therein, and it is now ordered to be thrown into a Bill. A motion will be made, and I have no doubt but it will be carried, to have it printed and circulated through the State, and to postpone the passing of it till the next session * * *"[43] Such a postponement was evidently taken, in order that the people might have an opportunity to express themselves, for the legislature did not take final action upon the constitution until its December session, 1777. President Rutledge, in refusing his assent to the constitution of 1778 and in a contemporary letter to Henry Laurens, denied the power of the legislature to adopt a constitution, and practically denied that a power to change the form of government existed anywhere except upon the dissolution of an existing government.[44]

The New Jersey provincial congress entered upon the establishment of a constitution, in compliance with petitions from the inhabitants of different parts of that province.[45] There is no evidence as to whether this body doubted its power to take such action.

The attitude of the leaders of the Virginia convention of 1776 is well indicated by the statement of Edmund Randolph: "As soon as the Convention had pronounced the vote of independence, the formation of a constitution or frame of government followed of course. * * * Mr. Jefferson who was in Congress urged a youthful friend in the Convention [Edmund Randolph] to oppose a *permanent* constitution, until the people should elect deputies for the special purpose. He denied the power of the body elected (as he conceived them to be

[41] Force, *American Archives*, Fifth Series, iii, 61, 64, 71, 73.

[42] Ramsay, *Revolution in South Carolina*, i, 129.

[43] McCrady, *South Carolina in the Revolution*, 1775–1780, p. 213.

[44] Ramsay, *Revolution in South Carolina*, i, 132. Correspondence of Henry Laurens, 103.

[45] Mulford, *History of New Jersey*, 415, 416.

agents for the management of the war) to exceed some temporary regimen. The member alluded to communicated the ideas of Mr. Jefferson to some of the leaders in the house, Edmund Pendleton, Patrick Henry and George Mason. These gentlemen saw no distinction between the conceded power to declare independence, and its necessary consequence, the fencing of society by the institution of government. Nor were they sure, that to be backward in this act of sovereignty might not imply a distrust, whether the rule had been wrested from the king."[46] St. George Tucker has stated strongly the case in favor of the convention's exercising the power without specific authority from the people. He says the convention was not an ordinary legislature, but a revolutionary body deriving its power directly from the people. "It was the great body of the people assembled in the persons of their deputies, to consult for the common good, and to act in all things for the safety of the people." Tucker also calls especial attention to the fact that the formation of a government had been under discussion among the people.[47] No one familiar with the close relationship which existed between the local and central revolutionary organizations in the colonies in 1776 can doubt that the actions of the provincial congresses of South Carolina, Virginia and New Jersey expressed the sentiments of the people of these States.

There have been three steps in the development of what is now recognized as the general procedure in the framing of State constitutions: (1) The establishment of the distinction between the constitution and ordinary legislation, and the development of a distinct method for the formation of constitutions. (2) The development of the constitutional convention as a body distinct and separate from the regular legislature. (3) The submission of a constitution to a vote of the people, after it has been framed by a constitutional convention. The first step is fundamental; the other two involve but the elaboration of machinery to carry out more clearly the distinction

[46] Rowland's *Life of George Mason*, i, 235. *See also* Jefferson's *Notes on Virginia*, Ford's *Writings of Jefferson*, iii, 225–227.

[47] Tucker's *Blackstone*, i, part 1, Appendix, 87–92. This is a summary of Tucker's opinion in the case of Kamper v. Hawkins, in the general court of Virginia in 1793. Works of John Adams, iv, 191. Henry's *Patrick Henry*, i, 418. Force, Fourth Series, vi, 748.

between constitution and ordinary legislation. It cannot be said that the third step has yet been fully taken, and that submission of a constitution to the people is essential; the Virginia constitution of 1902 was not submitted to a vote of the people.[48]

The people of the colonies were familiar with the distinction between statute and constitution; at the foundation of their political convictions lay the theory that the principles of government are permanent and may be changed only by the people. But for the first time they were brought face to face with the problem of establishing such principles, of framing written constitutions superior to and limiting all ordinary governmental organs. Theirs was the first step in the development of the constitutional convention, in the establishment of principles for the adoption of constitutions different from those to which they were accustomed for the enactment of laws.

Even had the people come in 1776 to a belief that constitutions should be adopted by representative bodies independent of the regular legislatures, such a system would have been in many cases hazardous and impracticable. The leaders of the people were already assembled in provincial congresses, organizing for military defense, and in most of the States both central and local organizations were busily engaged in suppressing opposition to revolutionary measures. They succeeded in many cases in suppressing opposition only by virtue of their superior aggressiveness. To permit the creation of independent conventions would be to risk the loss of much that had been gained by united and aggressive action. Permanent governments, if established at all, must be established by existing provincial representative bodies. That the people recognized the superiority of constitutions to statutes is clearly shown by the fact that nine[49] of the twelve constitutions adopted between 1776 and 1778, and the proposed Massachusetts constitution of 1778, were drafted by legislative bodies especially empowered by their constituents to take such action; and by the further fact that expediency was urged as the most important argument against similar authorization in South Carolina and Virginia in 1776.

[48] A. E. McKinley in Political Science Quarterly, xviii, 509.

[49] New Hampshire, Pennsylvania, Maryland, Delaware, North Carolina, New York, Georgia, Vermont, South Carolina (1778).

In New Hampshire and Massachusetts, during the Revolutionary period, was developed the constitutional convention as we know it today; that is, the independent body for constitutional action, with the submission of its work to a vote of the people. But it should be remembered that before this development took place both of these States had established fairly stable governments, New Hampshire by its constitution of 1776,[50] and Massachusetts, by the resumption of its charter in July, 1775. In neither was the need of a new government of great urgency; in neither was there an aggressive tory element. Neither of these States was threatened by military operations after the surrender of Burgoyne in October, 1777.[51] In neither State was danger to be apprehended from the creation of an independent convention and the submission of its work to a vote of the people.

In this paper it is assumed that the fundamental principle of American constitutional development is the distinction of the constitution from ordinary legislation, and the proceedings of the early conventions have been examined to discover how far this distinction influenced the action of those bodies from 1776 to 1784. In connection with this subject it will also be of interest to discover what machinery the constitutions of the Revolution themselves established for their amendment or for the adoption of new constitutions.

The absence of provision for alteration in the constitutions of 1776–1777, should not be taken as an indication that their framers thought the regular legislatures competent to alter or establish constitutions, but rather that they did not consider the matter at all. Thus the constitutions of South Carolina (1776), Virginia and New Jersey, framed by bodies not expressly authorized by the people to do so, contain no provisions for amendment, but neither do the constitutions of New Hampshire (1776), North Carolina, and New York, framed by bodies which had such express authorization.

Of the eight constitutions of the Revolutionary period which

[50] The New Hampshire constitution of 1776 really organized a legislature only, and legislative action completed the governmental structure. *See* a paper by the present writer in Proceedings of the N. H. Bar Association for 1906.

[51] Cushing, *Transition of Massachusetts*, 187, calls attention to the favorable position of Massachusetts in 1778 for the framing of a constitution in an orderly manner.

made provision for their amendment, those of Maryland, Delaware and South Carolina (1778) provided for final action in such cases by the legislature, but in a manner different from that for the enactment of laws. Maryland provided that no part of the constitution or declaration of rights should be altered "unless a bill so to alter, change or abolish the same shall pass the General Assembly, and be published at least three months before a new election, and shall be confirmed by the General Assembly, after a new election of Delegates, in the first session after such election," and that no part relating especially to the Eastern Shore should be altered without the concurrence of two-thirds of the members of both branches of the legislature.[52] Delaware provided that certain parts of its constitution should not be subject to amendment, and that "no other part of this constitution should be altered, changed, or diminished without the consent of five parts in seven of the assembly, and seven members of the legislative council."[53] The legislative council was composed of nine members. In South Carolina (1778) it was provided that "no part of this constitution shall be altered without notice being previously given of ninety days, nor shall any part of the same be changed without the consent of a majority of the members of the senate and the house of representatives."[54] For ordinary legislation sixty-nine members of the assembly, out of nearly two hundred, formed a quorum, and less than half of the members of the council were sufficient to act.

In Pennsylvania a council of censors was to be elected every seventh year "to enquire whether the constitution has been preserved inviolate in every part; and whether the legislative and executive branches of government have performed their duty as guardians of the people, or assumed to themselves, or exercised other or greater powers than they are entitled to by the constitution." The council of censors, two-thirds of its members concurring, was to have power to call a convention to amend the constitution in such parts as that body should think necessary, and it was further provided that "the amendments proposed, and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day

[52] Md. Constitution of 1776, art. 59.
[53] Del. Constitution of 1776, art. 30.
[54] S. C. Constitution of 1778, art. 44.

appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject." Vermont copied this provision of the Pennsylvania constitution, except that it provided a different manner for the election of members of the council of censors.[55]

In Georgia also provision was made for a constitutional convention but here it was to be called by the legislature upon the petition of a majority of the voters of a majority of the counties. The petitions of the people were to specify the amendments desired, and the legislature was required to order the calling of a convention, "specifying the alterations to be made, according to the petitions preferred to the assembly by the majority of the counties as aforesaid."[56]

The Massachusetts constitution of 1780 made provision for the submission to the people in 1795 of the question as to the desirability of revising the constitution. If two-thirds of those voting on the question should favor a revision the general court was to call a convention for that purpose. The New Hampshire constitution of 1784 was the first to contain the specific requirement not only of a separate convention for constitutional action, but also that the work of such convention should be submitted to the approval of the people; this constitution provided that "the general court shall at the expiration of seven years from the time this constitution shall take effect, issue precepts * * * to the several towns and incorporated places, to elect delegates to meet in convention for the purposes aforesaid: the said delegates to be chosen in the same manner, and proportioned as the representatives to the general assembly; provided that no alteration shall be made in this constitution before the same shall be laid before the towns and unincorporated places, and approved by two-thirds of the qualified voters present, and voting upon the question."

[55] Pa. Constitution of 1776, art. 47. Vermont Constitution of 1777, art. 44.
[56] Georgia Constitution of 1777, art. 63.

NOTES ON CURRENT LEGISLATION

MARGARET A. SCHAFFNER

Absinthe Prohibition in Switzerland. An amendment has been added to the federal constitution of Switzerland prohibiting the manufacture, importation or sale of absinthe. The amendment was secured through the popular initiative; the proposition was voted upon July 5, 1908, and was carried by a vote of 236,582, against 135,888.

The increased consumption of absinthe has alarmed the Swiss people. Recently the sale of the drug was prohibited in the cantons of Geneva and Vaud by cantonal ordinances. The initiative petition for the federal amendment was signed by a large proportion of the voters in the several cantons. The signatures secured numbered 4022 in Basel-land; 38,337 in Berne; 9535 in Fribourg; 3420 in Glarus and 9628 in Neuchâtel. The total vote cast at the election both for and against the amendment was 372,470, out of a voting strength of over 807,700 for the entire country. A resubmission of the question may not take place unless a petition to that effect be signed by at least 50,000 qualified voters.

M. A. S.

Capital Stock. At the last session of the Massachusetts legislature, the law governing the issue of stocks by transportation companies was again amended. This law is far from the beginning of State regulation of the issue of stocks and bonds in Massachusetts. The whole corporation history of the State is a history of regulation, supervision and control, either by the legislature directly or by commissions composed of experts. Massachusetts was the first State, and one of the few States of the present time which is striving to find the proper and just method of regulating public service corporations in their issue of stocks and bonds.

The regulation of the issue of stocks and bonds by general legislation began as early as 1852 when no railroad company, obtaining an extention of time for the construction of its road, was to issue any stock for a less sum or amount than the par value named in the charter.

In 1868 a law was passed forbidding railroad corporations, telegraph and gas light companies to issue any additional stock, or issue certificates of stock unless the par value of the shares was first paid in cash

to the treasurer of the corporation. This law remained in force until 1871, when it was again modified and railroad corporations, authorized to increase their capital stock, or to issue additional shares of stock for any purpose, obliged, if the cash market value of their shares exceeded the par value, to sell and dispose of all their new and additional stock for the benefit of the corporation. All shares were to be offered for sale to the highest bidder at public auction in the city of Boston after proper notice and not more than 2000 shares were to be offered for sale on the same day, and none of the shares offered were to be sold for less than their par value.

This section was incorporated in the revised and consolidated railroad act of 1874 (c. 372), but only remained in force until 1878, when a law was passed permitting the stockholders of a corporation to subscribe for their proportion of the new stock at par; the par value to be paid in cash before a certificate was issued. If the stockholders failed to subscribe for all the capital stock to which they were entitled, the directors were required to sell the remaining shares at public auction to the highest bidder the same as all shares were required to be sold under the law of 1871.

In 1893 the issue of stock was placed under the supervision and control of the railroad commission, and when a railroad corporation wished to increase its capital stock, the number of shares required to produce the amount necessary for the purpose for which the increase was authorized, were to be offered proportionally to the stockholders at the market value at the time of the increase; the market value to be determined by the board of railroad commissioners, after taking into account previous sales of stock and other pertinent conditions. Any shares remaining unsubscribed for by the stockholders entitled to take them were to be offered for sale to the highest bidder in Boston or some other city or town prescribed by the commission. No shares were to be sold or issued for a less sum to be actually paid in cash than their par value. The provision was added that when the increase of capital stock did not exceed 4 per cent, the directors might dispose of the increase at public auction to the highest bidder without first offering the shares to the stockholders at the market price as fixed by the commission.

The whole law relating to railroad corporations and street railroad companies was revised and amended in 1906 (c. 463) but no material change was made in the law of 1893 relating to the issue of new shares of stock by such corporations.

In 1908 the law relating to the price at which railroad corporations

and street railway companies might offer new stock to their stockholders was amended and now any railroad, street railway, electric or elevated railway company, which is in actual possession of and operating a railroad or railway, must, upon any increase of its capital stock, offer the new shares proportionally to its stockholders at such price not less than the par value as may be determined by its stockholders. The directors upon the approval of the increase may cause written notice to be given to each stockholder of record on the books of the company stating the amount of the increase, the number of shares or fractions of shares, to which he is entitled, the price at which he is entitled to take them, and fixing a time not less than fifteen days after the date of such vote to increase within which he may subscribe for his proportion of the additional stock. Each stockholder may subscribe for his portion of the stock within the time limited and payment must be made in cash before a certificate is issued.

The following exception is made to this rule. If the increase does not exceed 4 per cent of the existing capital stock of the company, the directors, without first offering the new shares of stock to the stockholders may sell them at auction to the highest bidder at not less than the par value to be actually paid in cash. They may also sell at public auction any shares, which remain unsubscribed for by the stockholders entitled to take them. These shares must be offered for sale in the city of Boston, or in some other city or town prescribed by the board of railroad commissioners; and notice of the time and place of the sale must be published. No shares are to be sold or issued for a less amount to be actually paid in cash than their par value.

The determination of the board of railroad commissioners as to the amount of stock which is reasonably necessary for the purpose for which the stock has been authorized must, in the case of railroad and street railway corporations be based upon the price at which such stock is to be issued as fixed by the stockholders. The board cannot approve any particular stock if, in its opinion, the price fixed by the stockholders is so low as to be inconsistent with the public interest.

ROBERT ARGYLL CAMPBELL.

The English "Children's Bill." The king's speech at the opening of parliament in January (1908) foreshadowed at least a dozen important measures. When parliament adjourned at the end of July for the summer vacation, only two, the Irish universities bill and the old age pensions bill, had passed. Of those measures which have received

favorable attention and which go over to the fall session, none has been of more general interest to Americans, because none deals with a subject with which we are better acquainted, than the children's bill.

Our enthusiastic reception of the juvenile court idea, and our extensive legislation concerning "dependent, neglected and delinquent children," since the Illinois legislature passed the first juvenile court law in 1899, has made the "problem of the child" a matter of general and familiar interest throughout the United States. In 1905 no less than 20 and, in 1907, 18 States passed juvenile court or probation laws, or both. By the end of 1907, 27 States and the District of Columbia had juvenile courts, and 33 had probation laws. This phenomenal development has attracted much investigation from abroad. The writings of American judges and the reports from their courts together with the investigations of such men as M. Éd. Julhiét, Sen. Bérenger, Dr. Bearnreither, Judge Harald Salomon, and the reports of the Howard Association, the International Prison Commission, the London Conference of 1906, and others, have given international publicity to the best features of modern child legislation.

For England this movement has borne its latest fruit in the present attempt to consolidate and amend the already valuable enactments concerning the treatment of children which appear on her statute books.

The legal principle which underlies juvenile court law appears far back in English law in the rights and duties of the state as parens patriæ. "The lord chancellor is, by right derived from the crown, the legal and supreme guardian of all persons who have not discretion enough to manage their own affairs."

In 1840, parliament passed a law (3 and 4 Vic., c. 90) giving the high court of chancery the power to place any persons under twenty-one years of age who had been convicted of felony in the care of persons or associations who would care for them during minority. A law passed in 1847 (10 and 11 Vic., c. 82), providing for the summary trial of children not over fourteen, allowed the justices to excuse convicted offenders from punishment at their discretion. Another, in 1866, (29 and 30 Vic., c. 118) provided that "dependent and neglected" children under fourteen, found begging, wandering—without proper guardian—associating with criminals, etc., might be brought before a judge and sent to a certified industrial school or to a home always subject to discharge or transfer by the home secretary. By an act of 1879 (42 and 43 Vic., c. 49), the right of summary jurisdiction was extended to all cases, except homicide, where the right to jury trial was waived. The first offenders act, 1887 (50 and 51

Vic., c. 25), gave the court the power to release upon probation. Parents were made liable to be summoned as contributing to the offense of the child or for neglect, and might be tried with the child and be fined or made to pay security for future good behavior. Parental responsibility was extended in 1901 (46 Vic. and I Ed. I., c. 25), and a separate register required for juvenile cases. The colonies adopted many of the provisions of the English laws and originated new features some of which have been in turn reflected in English legislation. Thus, although parliament has passed no special "juvenile court" law, the courts have been fairly well prepared to deal with juvenile cases, not merely through the letter of the law but because of the wide discretionary power conferred upon the magistrates and judges.

The development of juvenile court principles has progressed rapidly in the English cities. The value of the probation system, of the detention home, and of judicial and educational coöperation have received wide practical recognition. The court instituted at Birmingham in 1905 was so successful that the government issued a circular pointing out the advisability of creating other such courts, a suggestion which many other cities have followed. The London country council prepared a reform based on the principles of special magistrates, separate courts, detention homes, and probation officers.

The bill which is now pending was introduced by Mr. Herbert Samuel, under-secretary for the home office, and was read for the first time on February 10. It met with immediate approval. It has passed two readings, and committees have been gathering statistics upon certain points involved in its provisions, while numerous additions have been suggested. Its title, "A bill to consolidate and amend the law relating to the protection of children and young persons, reformatory and industrial schools, and juvenile offenders, and otherwise to amend the law with respect to children and young persons," gives a clue to its contents, while its comprehensiveness may be inferred from the fact that it affects no less then thirty-two previous enactments, dating from 1839 to 1904, of which it repeals nineteen wholly. It contains six subjects: I. Infant life protection. II. Prevention of cruelty to children and young persons. III. Juvenile smoking. IV. Reformatory schools. V. Juvenile offenders. VI. Miscellaneous. Among its general provisions: cruelty to children is made to include neglect on the part of the person legally responsible to support the child. Careful specifications safeguard the religious preferences of children placed in institutions. Rules are laid down for governing procedure and concerning taking child

evidence. Some provision is made for emigration, under the supervision of the home secretary. The term "child" applies to persons under fourteen, and "young person" to persons between fourteen and sixteen years of age. It has been urged by some that the age of "young persons" be raised to seventeen or eighteen, as has been done in many of our State statutes, but this suggestion appears not to have gained the approval of the framers of the bill.

A feature which has attracted perhaps more varied comment than any other is the treatment of juvenile smoking (part three). No one may give, or sell, or supply through automatic machines, to any person under sixteen, any cigarettes, cigarette-papers, or tobacco for his own use; tobacco found in possession of children shall be confiscated; children found smoking on the street or in possession of tobacco shall be subject to reprimand or fine.

Parts four and five provide for the trial, sentence and disposal of neglected and delinquent children. Persons under sixteen may be brought before a court of summary jurisdiction, or a superintendent or inspector of police, and may, unless the case be one of homicide, be released on recognizance. If held, they shall be sent to a special place of detention. Courts of summary jurisdiction when trying juvenile cases shall (with exceptions) "sit in a different building or room" * * * or on different days or at different times * * *" from those of ordinary sittings. The proceedings are not open to the public, except to reporters, and even they will be excluded if the evidence is such as the court does not wish published. (The New Hampshire law of 1907 absolutely forbids the publication of what transpires in a juvenile court). Children are excluded unless their presence is necessary. The king may provide for the establishment of one or more separate juvenile courts for the Metropolitan (London) police district.

The conditions and offenses for which juveniles become subject to the jurisdiction of the court are much the same as those specified in our statutes. In disposing of the child, the judge may discharge, discharge on recognizance, or on probation under supervision, send to an institution, order to be whipped, fine, fine the parents or guardian or order them to give security for good behavior, commit to a detention home, imprison, or deal with the case "in any other manner in which it may be legally dealt with." A child, even under twelve, may be sent to an industrial school. Young persons may be sent to reformatories. The terms are limited. After eighteen months the offender may be placed out in a home. Persons discharged from an industrial school or a reformatory

remain under the supervision of the institutions up to their eighteenth and nineteenth years respectively.

The police authorities are to provide suitable places for detention, and are to keep accurate registers describing these places, their condition, and the children sent to each. The home secretary may make rules for these places and for their maintenance. Parents may be required to contribute toward the support of their children while in detention or in institutions.

Suitable modifications are made for applying the law to Scotland and Ireland.

Altogether this law, if passed, as it doubtless will be—with some changes, will introduce no sweeping reform in English methods, although it contains numerous new and practical features. Great value attaches to the fact that it codifies provisions which have been scattered and confusing. It is noticeable in comparing the legislation of several countries, that the juvenile court and probation laws of several of our States are far more comprehensive and complete than those of European countries. Those of several of the British colonies more nearly approximate ours. Germany, France, Austria-Hungary, Sweden, Belgium and Holland have been experimenting with one form and another of juvenile treatment, but the English law is far in advance of their statutes, as regards comprehensiveness.

The general impression which this bill gives is that of dealing with groups, leaving much as regards the needs of individual cases to the discretion of the judge and the ingenuity of the local authorities. It prescribes, however, much more minutely concerning what shall take place in the court-room and with regard to the legal aspects of the child problem than for the things which shall be done in trying to solve the social problem and in looking after the welfare of the child outside the requirements of the law. As contrasted with this, the American laws seem to aim at providing machinery and specifying the means for reaching the individual. Provisions for separate judges, specifying duties and salary; for probation officers, specifying their number, paid and unpaid, their salaries, and their duties in cities of each of several classes; for detention homes, specifying how they shall be kept, how paid for, and where located; these and other matters are cared for in our State statutes with greater attention to detail. We may account for this partly by our advanced position in this particular field, but more largely by remembering the difference between the spheres of our State, and the English national, legislatures. Given a law such as this bill provides, which is

elastic, and which allows wide discretion to the judge, and given judges and local officers of integrity and ability, practically the same ends should be accomplished as those which are more specifically outlined in other statutes.

STANLEY K. HORNBECK.

Child Labor. Mississippi and Kentucky, have passed laws during the 1908 session of their legislatures looking toward the regulation of child labor.

The Mississippi law is entitled "An act to regulate the employment of children in mills, factories, and manufacturing establishments in this State, and to provide for the inspection of places wherein they are worked, and for punishment of violation of this act and for other purposes." Briefly the provisions are as follows: No child under twelve is to be employed in any mill or factory, and children between the ages of twelve and sixteen are not allowed to work in any factory longer than ten hours in any one day, more than fifty-eight hours in one week, nor after 7 p.m. nor before 6 a.m. For children under sixteen an affidavit is required of the parent or guardian stating the date and place of the child's birth, name of the last school attended, and the teacher under whom the last school work was done. The employer is to keep a complete record of these affidavits.

It will be noticed that no evidence of age or education is required other than the statement of the parent; moreover the law while requiring a statement as to education, does not prohibit the employment of illiterate children.

The sheriff of each county is required to visit once a month, without notice all manufacturing establishments in the county which employ children; and the county health officer must also visit all such establishments at least twice a year and report to the sheriff any unsanitary conditions, and the employment of any child afflicted with infectious or contagious disease, or any child incapacitated for performing its work. The enforcement of the law is thus left to local, elective officials.

The provisions of the law apply only to manufacturies of cotton, wool or other fabrics, and to the manufacturing establishments where children are employed indoors at work injurious to their health, or in operating dangerous machinery. The circuit court tries offenses under the act. Failure to give correct information or to obey lawful orders is punishable by a fine of from $50 to $100; violators of other provisions of the law are liable to a fine of from $10 to $100 or imprisonment or both.

The Kentucky law, entitled "An act to regulate child labor and to make the provisions thereof effective," makes more thorough provision for the regulation of child labor than does the Mississippi law.

The employment of children under fourteen is prohibited in any gainful occupation during school months, and in factories, mines, offices, stores, hotels or messenger service during vacations. Children between fourteen and sixteen must obtain employment certificates. No child under sixteen is to be permitted to work at any gainful occupation longer than ten hours in one day, more than sixty hours in one week, nor before 7 a.m. nor after 7 p.m. Hours of beginning and closing and of meals must be posted.

Employers must keep two lists of all children under sixteen in their employ, one of which lists must be posted. They must also keep on file and subject to inspection the employment certificates. These certificates are to be issued by the superintendent of schools or other properly authorized person, and are granted under the following conditions: (1) The person issuing must examine the applicant as to ability to read and write English, and physical fitness for work. (2) A birth certificate or religious record of the date and place of the child's birth must be presented, and if this is not obtainable, an affidavit as to the child's age by the parent or guardian must be taken before the officer issuing the certificate. (3) A school record is required showing regular attendance for at least one hundred days during the year previous to the applicant's becoming fourteen, or previous to the application for a certificate, and showing in addition to the ability to read and write, that instruction was received in grammar, geography, spelling and arithmetic through fractions, and if this record cannot be obtained, the officer must examine the child in the subjects mentioned. (4) The employment certificate must give the color of hair and eyes, height and weight of the child. The local school board is required each month to send the labor inspector of the State, a list of children receiving certificates.

Labor inspectors and truant officers investigate factories under the law, but complaints are brought by the former. Practically all establishments are prohibited from employing children under fourteen. Children under sixteen may not be employed around dangerous machinery, a list of which is given in the law, nor in any occupation dangerous to life, limb, health, or morals. Certain requirements as to seats for employees, sanitation and guarding of dangerous machinery are made applicable only to factories employing children. Persons employing or permitting the employment of children contrary to the provisions of

the law are liable to fines from $10 to $100, and in some cases to imprisonment, or both fines and imprisonment.

NELLIE F. SHEETS.

Commission Form of Government. During the 1908 session of the legislature, a law was passed in Mississippi providing for a commission form of government in cities. This law shows a continuation of the effort toward establishing a better form of government in municipalities.

The commission form of government in cities in the United States had its beginning in Washington, D. C. The first law was passed in 1874, and provided that the president, by and with the advice and consent of the senate, should appoint a commission consisting of three persons who should exercise all the power and authority previously vested in the governor or board of public works. The president was also to detail an officer of the engineer corps of the army of the United States who, subject to the general supervision and direction of the board of commissioners was to have charge and control of the work of repair and improvement of all streets and highways in the District of Columbia. In 1878 an act was passed providing for a permanent form of government for the District of Columbia, and in place of three commissioners and the army officer there were to be two commissioners who, together with the officer, were to constitute the governing body. The Washington system is a commission system, but the city which has given this form of government a new impetus, has led the way in the recent movement and has had the greatest influence in its spread throughout the States which have so lately adopted it, is Galveston, Texas, the city which originated the Galveston system.

The Galveston charter was drawn up and passed by the legislature in 1901. Under this charter the offices of mayor and aldermen were done away with, and a president and board of commissioners established in their places. At first the president and two of the commissioners were appointed by the governor and the remaining two elected; but the constitutionality of this procedure was questioned in the courts, and in 1903 the charter was amended so that all the commissioners are now elected by the qualified voters of the city. The following characteristics should be noted in the Galveston plan; the city is managed like a large corporation; the president of the board of commissioners is the general superintendent; the number of men in control, the number that may be held responsible, for the laws passed and their enforcement is very small; each member of the commission is the head of a department, shapes its

general policy, has general supervision over it and represents it in the meetings of the commission, the commissioners are elected at large and not from wards; and the old idea of the separation of powers so common in American government is done away with.

Several other cities in Texas adopted the commission system of government by special charter, and this legislation like all special legislation is lacking in uniformity in its minor detail, and sometimes even in its more essential characteristics. The city of Houston adopted the plan in 1905, and during the 1907 session of the legislature laws were passed granting similar charters to El Paso, Denison, Dallas, Greenville, and Fort Worth. During the same year (1907), general laws were passed in Iowa, Kansas, and North and South Dakota. Other States have granted special charters to some of their cities which resemble the Galveston plan in certain phases, but not in phases most characteristic of the system.

The general characteristics of the laws passed are that the number of men who have actual control, who direct the policies of the city, and who are held responsible for their actual working out and enforcement is small, the number of officers elected is reduced and the number appointed correspondingly increased, the officers elected are subject to the recall, and those appointed may be removed by the highest elective officer, or officers—the mayor or the mayor and commissioners—who are held responsible for their conduct. The referendum is also permitted in a varying degree. Certain laws provide for its use on all ordinances except routine measures, others on the sale of public utilities, still others on the issue of bonds, and nearly all on the grant of franchises for public utilities.

The Mississippi law passed in 1908 (c. 108) is more general than the laws passed in any of the other States mentioned. The legislature of Mississippi has left more liberty to, and permitted more discretion on the part of the locality with regard to the officers and the exact form of government than have the legislatures of the other States which have passed general laws on this subject. In Mississippi all cities and towns without regard to size may adopt a commission form of government. Any municipality desiring to adopt it must do so by petition; this petition is to set forth the number of commissioners desired, the time required of each per day in the service of the municipality, the salary of each per month, the amount of bonds required of each, and a statement of other officers to be elected. The petition is to be signed by 10 per cent or more of the qualified voters and then filed with the mayor and board of

aldermen. An election is then called and if a majority of the votes cast are in favor of the proposed commission form of government, the clerk must forward a copy of the resolutions and the election returns to the secretary of state, and that officer then issues a charter, signed by the governor, to the municipality. The charter as granted must set forth the facts of the original petition and authorize the municipality to elect the officers named. The charter may be amended in any detail at an election held for that purpose. The city or town adopting this plan is governed by three or five commissioners who are to be elected from the municipality at large without regard to ward lines, and one of the commissoners is voted for and elected by the people as mayor. The actual work of governing the municipality is divided into departments with one member of the commission at the head of each department.

All the powers, duties, rights, and privileges of the mayor and aldermanic body are conferred upon the mayor, upon the commissioners, and upon the subordinate officers of the municipality adopting this form of government. The additional power is granted the commission to appoint the necessary subordinate officers who are not specified in the charter as being elective, to employ such help as may be necessary to properly conduct the affairs of the municipality, to prescribe the duties of all subordinate officers, both elective and appointive, to fix and regulate their salaries, to remove any elective or appointive subordinate officer or school trustee for a good cause and to fill the vacancy by appointment, to abolish any appointive office except that of school trustee, and to consolidate two or more offices when necessity requires. If any subordinate officer or school trustee or any commissioner, other than mayor, fails, refuses, or neglects to discharge any of the duties of his office, or is guilty of malfeasance in office, and this fact is reported to the mayor by ten or more qualified voters, it becomes his duty to order an investigation and trial of the officer, trustee, or commissioner reported. All city officials must furnish surety bonds for the faithful and prompt discharge of their duties, and against malfeasance in office.

All franchises granted by the commission must be submitted to the qualified voters of the municipality at an election, and must receive the approval of a majority of the votes cast, before becoming effective. If a franchise fails to carry at an election, it cannot be voted upon again within a period of six months. The commission must hold regular meetings at least once every month to confer on matters pertaining to the different departments, to pass ordinances, or transact such other business as may be necessary; it must also hold regular meetings the

first Tuesday of each month, at which the minutes of the previous month's work and the report of all officers are to be read to the public. All accounts must be read at the monthly meeting and allowed if correct. All municipal officers who receive their office by election must attend this meeting and the public may be heard upon any petition or matter they may wish to bring before the commission.

Any municipality adopting the commission form of government may return to the former system after a petition signed by 10 per cent of the qualified electors and a favorable vote.

The Mississippi law does not provide for the initiative, provides for the referendum only in case of franchises and instead of having the right of recall, the commission has the right of removal of any elective or appointive subordinate officer, and all officers including the four commissioners may be reported to the mayor for negligence or malfeasance in office.

ROBERT ARGYLL CAMPBELL.

Juvenile Delinquency. Among the Ohio laws of 1908 is an act of forty-two sections relating to the treatment and care of dependent, neglected and delinquent children. In the main the bill contains the same provisions as the Ohio juvenile court act of 1902 and the amendments to it in 1904 and 1906. It has, however, made some additions and changes, the first of which is to give to the common pleas, probate, insolvency, and superior courts concurrent jurisdiction in cases relating to children under seventeen years of age. At the same time the lawmakers seem to take particular care not to call the court a juvenile court, the records juvenile records, nor the room a juvenile courtroom as was done in the earlier acts. In one place only is a judge called juvenile judge. Another difference is the addition to the definition of "delinquent child" which is made to include any child visiting billiard rooms, using cigarettes, visiting and frequenting any theater, gallery or penny arcade where any lewd, vulgar, or indecent pictures are exhibited or displayed, and jumping or catching on street or traction cars. The new law increases the amount a county may spend for the services of probation officers to $7500 a year, and has made the bill to read "one or more *may* be a woman" instead of "one or more *shall* be a woman" as in the earlier laws. The most encouraging changes and additions are the strong measures taken to force the parent to do his duty to the child. The act reads "for every day such failure, neglect or refusal of a parent or guardian to do his duty toward his child shall constitute a separate

offense," and again the act is to be construed "so that the child may be educated and cared for in such a manner as best subserves its moral and physical welfare and as far as practicable, in proper cases, that the parent may be compelled to perform his duty in the interest of the child." Lastly the new law provides for detention homes wherever needed.

N. M. MILLER SURREY.

Hours of Labor. An act to limit the hours of work in coal mines was assented to in the province of Alberta, March 5, 1908. The period of work below ground is not to exceed eight during any consecutive twenty-four hours, except "in the case of any workman who is below ground for the purpose of rendering assistance in the event of accident, or for meeting any danger, or for dealing with any emergency or exceptional work which requires to be dealt with without interruption in order to avoid serious interference with ordinary work in the mine."

The workmen in the mine may at their own cost station representatives to be at the pit head at all times when workmen are being lowered or raised for the purpose of observing the times of lowering and raising. Any person guilty of violating the act is on conviction to be fined for each offense; in case of violation by the owner, agent, or manager of the mine the fine is not to exceed $50, in any other case it is not to exceed $5.

The lieutenant-governor in council may "in the event of great emergency, or of any grave economic disturbance due to the demand for coal, exceeding the supply available at the time" suspend the operation of the act "to such extent and for such period" as may be named in the order, either as respects all coal mines or any class of coal mines.

M. A. S.

Liquor-Search and Seizure. The difficulties of enforcing the excise laws of the State against illegal selling caused the enactment of a law in New York (c. 350, Laws of 1908) for search for seizure and forfeiture of liquors kept for unlawful traffic. All such liquors and their containers are declared public nuisances and are forfeited to the State when seized in the manner provided by the law. Complaints may be made by special agent of the State excise department, peace officer, or any citizen to any judge of a city court of record, county judge, or supreme court justice and such judge or justice, if satisfied that there is probable cause to believe that liquors are kept for unlawful traffic shall issue a search warrant to be executed in the manner of such warrants by a special agent or peace officer. The warrant must contain a general notice to all owners

of seized liquors to appear within twenty days and show cause why the liquors should not be forfeited. At the time and place specified in the warrant, any person claiming any interest in the seized liquors may interpose a verified answer to the allegations upon which the warrant was issued. The issue thus joined is triable in the court as other issues of fact are tried. If it be established on trial or in case no answer is interposed in a hearing without trial that the seized liquors were kept for unlawful sale or distribution, judgment of forfeiture to the State must be entered. In such case the judgment must provide for the public destruction of the liquors and the vessels in which they are contained. No other penalties are provided by the act.

JOHN A. LAPP.

Literary Institutes. Provision for the organization and maintenance of "mechanics' and literary institutes" in the province of Alberta is made in a provincial act assented to March 5, 1908.

The object in establishing such institutes is "to encourage mechanics, manufactures and arts generally: (a) by having evening classes organized for the imparting of practical instruction to the pupils; (b) by establishing a library of books on one or more of the following subjects, viz: mechanics, manufactures, agriculture, horticulture, philosophy, science, the fine and decorative arts, history, travels, poetry, biography, and fiction; (c) establishing a reading room."

An institute may be organized whenever thirty persons resident in any city, town, or village, or in any township or two contiguous townships agree to form themselves into an institute, promise to pay an annual membership subscription of at least one dollar, and in other respects, agree to conform to the regular procedure provided for the organization of institutes.

M. A. S.

Night Work in Italian Bakeries. A law of March 22, 1908, forbids night labor in bakeries and pastry shops between 9 o'clock and 4 o'clock except that work may continue until 11 o'clock on Saturday night. The prohibition is applied specifically to the preparation of yeast, to the firing of furnaces, and to kneading and baking.

On account of the cooking of yeast the communal council may permit labor to commence two hours earlier during the months of June, July, August and September, if the necessities of the industry, or of the locality or the kinds of bread demand. The advice of the chief

of the sanitary service is required to secure this permission. The law may be suspended for not more than one week at the time of public feasts and fairs, or in case of public necessity. The law is enforced by the inspectors of labor and by the communal bureau of hygiene.

J. HARDING UNDERWOOD.

Nepotism. Oklahoma (May, 1908) and Texas (February, 1907) have each enacted a law, apparently unique,[1] against this too prevalent abuse of the appointing power. The later act, an excellent example of growing "legislative plagiarism," copies the earlier one almost verbatim. These acts forbid "any executive, legislative, ministerial or judicial officer" of the State or any of its subdivisions "to appoint or vote for the appointment of any person related to him by affinity or consanguinity within the third degree" to any position or employment in any department of state or local government of which such officer is a member, and which is compensated "out of public funds or fees of office." The Texas law further specifically forbids any district judge to appoint as official stenographer of his district any person so related either to himself or the district attorney of the district. Both acts declare it unlawful for one officer to appoint to such a public position under his control, in part consideration for a like favor, any person thus related to another officer. The Oklahoma law further provides that no person so related to any member of either of the three branches of the "State government" shall be eligible to hold any position or employment in that branch. All officers are prohibited from drawing or authorizing any warrant for the payment, or from the paying out of any public funds, of any such ineligible appointee. The Texas act, but not the Oklahoma, here modifies the liability of the official by the phrase "knowing him to be ineligible." Every officer violating any provision of these acts is to be deemed guilty of a misdemeanor punishable by a fine of from $100 to $1000. Furthermore such violation involves "official misconduct" for which he "shall forfeit his office." Whether criminally prosecuted or not, the law commands his removal from office by the "mode of trial and removal prescribed in the constitution and laws of this State" (Oklahoma). The Texas statute specifically provides for ouster by quo warranto proceedings in district court, where no method is prescribed in its constitution.

L. E. AYLESWORTH.

[1] An examination of several standard works with respect to the law of public officers fails to disclose any reference to such an existing statute.

Primary Elections. Three more States, Maryland, Ohio, and Oklahoma have added new statutes to the primary election legislation of 1908, making a total of five general direct primary laws for the year. These laws, while similar in general underlying principles, differ so widely in applying them, both in degree and method, as to represent two if not three distinct types of primary legislation. All abolish the old combined caucus and convention system, but vary greatly in the extent to which they substitute direct nominations and direct election of delegates and committeemen. All transform the political party from a purely voluntary, extra-legal and irresponsible association into a more or less public, legal and responsible organ of government, but differ widely as to the degree in which they definitely determine party organization and powers and regulate party action. All three acts are mandatory, each as far as it goes, but are wide apart in the amount of discretion allowed the party organization, or governing bodies, Oklahoma allowing the least, Ohio more, and Maryland the most. Oklahoma provides for a pure or unmixed system of direct primary nominations, Ohio and Maryland, for a composite or mixed system of direct primary and delegate convention combined. The Oklahoma and Ohio laws apply throughout their respective States, the Maryland law only to the counties outside Baltimore which already had a special primary law that is now made to apply in the city to primary elections for State offices.

The Oklahoma law is most complete in its scope and provides for the direct nomination of all candidates of all elective offices, national, State and local without exception and including candidates for presidential electors and delegates to national conventions after 1908. By the Ohio act all candidates for offices, including congressmen,[1] filled by a county or subdivision thereof, or municipality are to be nominated by direct primaries. However, in counties electing four or more members of the general assembly[2] or forming a judicial district or subdivision that elects a common pleas judge or judges[3] the county committee may by majority vote at least forty days before the primary day direct that the nominees for said legislative and judicial positions shall be named by delegate convention. All candidates for State and district offices, where the district is larger than a county, are to be nominated by delegate conven-

[1] Only four are included, from the first and second districts (Hamilton), the twelfth (Franklin), and the twenty-first (Cleveland).

[2] There are four of these: Hamilton (Cincinnati); Cuyahoga (Cleveland); Franklin (Columbus); and Lucas counties.

[3] Five such counties exist: Belmont, Butler, Cuyahoga, Franklin, Hamilton.

tions. It is specifically provided that the act shall not apply to delegates to national conventions. Under the Maryland law all candidates in every precinct, congressional, judicial or election district, or county may be nominated by a direct vote of the party electors, or by county or district conventions of delegates chosen at a primary election or by a State convention of delegates chosen by county, judicial or congressional conventions of delegates elected directly by the party voters, as shall be determined by the State central committee of each party. But in any county where direct nomination prevails by party rules or custom, a change cannot be made without a referendum to the party voters. Every candidate for nomination for a State office has the right to submit his candidacy to a direct vote of the electors of his party in the various counties and the legislative districts of Baltimore. But the result is not ascertained as is usual in primary laws, by determining the total vote for a candidate throughout the State. On the contrary the vote of each county or district is considered by itself and the carrying of a county or district by any candidate merely serves legally to instruct and require its delegates to the State convention to vote for him. Not the party voters but the State convention voting by counties and districts under the unit rule and as instructed by the primary vote, formally and legally makes the nomination.[4]

The Ohio and Maryland acts provide for annual, the Oklahoma for biennial primary elections. The Ohio law specifically provides for a separate primary election in odd numbered years "to nominate candidates for township and municipal offices and members of the school board," the others do not. Ohio and Oklahoma require the primary elections of all parties to be held on the same day at the same time and place and before the same election board. Maryland, however, provides for a separate primary election at a separate polling place and before a different election board for each political party. The day and place and time are to be determined, within certain limits, by the governing committee of each party in the different political divisions. Hence so far as

[4] Where representation in the convention is in proportion to population or voting strength such a method will still practically give effect to the will of the party electors. But, where, as in Maryland, representation is decidedly unequal, a candidate may easily receive a majority or plurality of the party votes and yet fail of nomination. This device seems clearly designed to give the rural counties essentially the same political advantage over the city of Baltimore, in making nominations for State offices, that they possess with respect to representation in the State legislature.

the law is concerned different parties may hold their primaries on different days; the primaries for State offices and for local offices, or even the primaries of the same party for local offices in separate counties or districts, may occur on different days. Political custom and necessity will no doubt enforce uniformity within each party, and to this end the law provides that the days fixed for nominations for both State and county offices "may be the same day."

In Ohio and Oklahoma the expense is wholly a public charge, the same as at general elections. In Maryland it is divided between the public and the candidates, in the case of primaries for nominating candidates for county or district offices. But the expense of senatorial primaries and of separate primaries for State offices must all be borne by the candidates. In every instance each candidate's proportional share is determined and collected by the proper party committee prior to the primary election.

None of the laws requires any candidate to pay a fee to get his name on the ballot, except that in Maryland the candidate must pay his assessment for primary expenses before his name will be put on. Ohio and Oklahoma require nomination petitions signed by a specified number or percentage of party voters. In Oklahoma 1000 signatures are required for United States senator or for any office filled by the vote of all the electors of the State; 500, for district offices, legislative excepted; 100, for county offices or member of the legislature; 50 and 15 respectively for county subdistrict and township offices. In Ohio the candidate's petition must have the signatures of 2 per cent of the party voters in the political subdivision from which he seeks nomination. But petitions of candidates for United States senator require the signatures of only one-half of 1 per cent of the party voters of the State. No provision is made by any of these States to secure distribution of signers over the State or political subdivisions. Maryland, aside from the assessment for expenses, merely requires each candidate to file a certificate stating his name, residence, age (in some cases his business and business address), the position for which he seeks a nomination, and the party to which he belongs. The Oklahoma statute forbids any person to sign the petition of more than one candidate" for the same office and party nominated." If he does, his name is not to be counted on either petition. The Ohio statute permits the voter to "sign as many such papers as there are candidates for the office, or position, but no more." The signer is required to add his residence and street number if any, and the date of signing. Where persons have signed more petitions than authorized, their signa-

tures, nevertheless, are to be counted to the legal number upon the paper or papers first signed. Voting in a party primary or signing the petition of a party candidate is not to disqualify any elector for signing a petition for the nomination of an independent or non-partisan candidate by nomination papers. In Oklahoma non-partisan candidates are to be definitely nominated on the same conditions required of the party candidate to get on the party ballot. But in no case is the name of a non-partisan candidate to be printed on any primary election ballot.[5] In Maryland and Ohio the names of candidates are to be arranged alphabetically by surnames under each office. The Oklahoma law makes no provision as to the order of the names of candidates for individual offices. In Ohio and Oklahoma the primary ballots are prepared and distributed by public officers the same as for general elections, while in Maryland the party committees are to discharge the function.

All three laws provide for the closed primary with separate party ballots, of different color in Oklahoma but not in Ohio and Maryland. In the matter of party test the laws are all quite liberal. All require the voter to be registered where registration is necessary to vote at regular elections, which in Maryland includes the entire State, but in no case is registration accompanied by a declaration of party affiliation. Oklahoma prescribes no party test. "Each voter shall designate which ticket he desires to vote, and upon request the election inspector shall deliver to the voter the ticket called for." In neither Ohio nor Maryland is any declaration of party affiliation required of the voter before receiving the party ballot requested. Only in case his party membership is challenged is the party test administered. In Ohio the voter's party affiliation is to be determined by his "vote at the last general election held in even numbered years." Furthermore, unless the "judges of the party to which the person asking the ticket claims affiliation" are satisfied he is a legal voter his vote is to be rejected. While this test looks to the past (two years past) rather than the present and future, it does nevertheless permit independent voting at municipal elections in odd numbered years without affecting the elector's legal party standing. In Maryland every registered voter shall be deemed a member of the party whose ballot he tenders: (1) if he voted at the last preceding election for its electors for president, or its candidate for governor, comptroller or other State office, or its county candidates; (2) if he be a minor who will be of age prior to the next election; (3) if he, "having failed to vote at such last election,

[5] By inference this would also seem to be the case in Ohio.

declares his intention to vote at the next succeeding election for the candidates named by the party."

These laws all provide for plurality nominations with no provisions against nominations by small minorities. In Maryland this principle is made to apply not only to primary elections but also to the nomination by the State convention of candidates for State offices. Thus all five primary election laws of the year testify to the strong present tendency, however unfortunate, toward acquiescence in plurality nominations.

Each of these laws provides for a direct vote on candidates for United States senator. In Ohio the provision is permissive, not mandatory, and the vote is to be merely advisory. It is to be taken at primary elections for nominating candidates for a general assembly that is to choose a United States senator, the result to be certified to the electing body by the secretary of state. In Oklahoma each party is to nominate its candidate for United States senator just the same as for any other office. Further than this mandatory nomination the law makes no attempt to bind the members of the legislature, but trusts to the force of party opinion and custom to compel support of the party candidate.

Maryland has enacted a separate mandatory "senatorial primary election law." On the day of a general election of members of a general assembly that is to choose a United States senator each political party is to hold a primary election to nominate its candidate for such office or position. These party primaries are to be in charge of the different party committees, and are to be held apart from the polling places of the general election and apart from each other. The entire expense is to be borne equally by the candidates, and if the share of any candidate is not paid by a given date his name will not be printed on the primary ballot. The same principle or political device is applied here as in the nomination of candidates for State offices by direct vote. The candidates are not to be nominated by the party voters at large, but by counties and legislative districts. The candidate of any political party receiving a plurality of the votes cast by its electors in any county or district becomes the nominee of his party therein, and is entitled to receive the votes of all members of the general assembly elected by his party in such county or district.[6] It is declared that such party nomina-

[6] The political significance of this system or device will be more readily understood in the light of the fact that Baltimore City, with almost 43 per cent of the population of Maryland, has only 4 of 27 members in the senate, and 24 of 101 members in the house of delegates, or scarcely 22 per cent of the joint vote in the general assembly.

tions are "to be binding as far as may be possible according to law" on the party members of the legislature from the various counties and districts. In both Ohio and Maryland any political organization must poll 10 per cent of the total vote cast in the State, or other political division to be a legal political party bound by the provisions of the respective primary laws. Oklahoma, however, attempts no such definition, but makes its law include all "of the several political parties" regardless of the vote polled. Ohio and Oklahoma each prescribe a uniform and essentially complete system of party organization, but Maryland leaves their organization very largely to the parties themselves. In Oklahoma this organization consists of a set of committees and a platform convention. It is quite democratic, for, as in the case of nominations, it practically all proceeds directly from the party electorate. The permanent party organization is to consist of committees as follows: (1) A State central committee of one member from each county; (2) county central committees of one member from each voting precinct; (3) city central committees of one member from each ward or voting precinct. All are to be chosen by direct vote every two years. Any of these committees may create from, or without, their membership any executive or campaign committee they may deem necessary, and in such manner as they may see fit." Any district committee may be created by the members of county central committees whose counties or precincts form such district. "For the purpose of formulating and promulgating a platform of party principles" each party is to hold a biennial "State, district, county, or municipal convention as the case may be." Delegates are to be chosen at the primary election, but the number and apportionment are left entirely with the party central committees.

In Ohio the organization is more complex than in Oklahoma; also less democratic and more representative in principle, since it is not so directly under the control of the party electorate. Only nominations for offices filled by or within counties and municipalities (and these not without exceptions), delegates to county conventions, and members of county central committees, must proceed directly from the party voters. The permanent party machinery is to consist of the following series of "controlling committees:" (1) A State central committee of one member from each congressional district, chosen by the district delegates to the State convention; (2) a district committee for each district composed of two members chosen from each county or part of county therein by its delegates to the district convention; (3) county central committees of one member from each ward and township, or from each precinct (as deter-

mined by the outgoing committee) to be chosen by direct vote; (4) city committees composed in each instance of the members of the county committee chosen from a city; (5) judicial or congressional committees within counties, to be composed respectively of members of the county committees resident in such district. The committees are all to serve for two years.

The Ohio law further provides for a series of delegate conventions, State, district and county. The State and district committees are to determine the representation in their respective conventions and apportion the delegates to the different counties in proportion to the party vote for governor, in the case of the State convention on the basis of one to every 500 votes or fraction of 250 or more. To the discretion of these committees is also left the question as to whether the delegates to the State and district conventions are to be chosen directly by the party electors or indirectly through the county conventions. When any committee "does not require that all delegates to a State or district convention shall be elected by direct vote" it is authorized to permit county central committees to determine by which method delegates shall be chosen in their various counties. Here is a legal opening for the extension of the direct participation of the electorate by party practice or custom. Representation in the county convention is to be fixed and apportioned by the county central committee, but the delegates must be chosen at primary elections. This act forbids any delegate or committeeman chosen at any primary election, to authorize another person to act or vote in his stead, or any person so to act or vote, on pain of fine and imprisonment.

The Maryland law does not prescribe any definite party organization. It assumes its existence, and seeks to regulate and control its workings, within certain limits, while leaving the form of organization to the parties themselves. A "State central committee for the State" and a "State central committee" for each of the various counties and legislative districts, or like governing bodies, are necessitated to perform the duties imposed by the law. "Managing bodies" of political parties and "all county executives or executive committees, not appointed by a party convention" are to be chosen at primary elections. State, district, and county conventions are assumed and required, but nothing is provided with respect to representation, apportionment of delegates, etc. It is provided, however, that delegates to State conventions are to be chosen by county and district conventions, the delegates to which must be elected at a primary election.

The Oklahoma act, but not those of Ohio and Maryland, contains provisions with regard to campaign contributions, expenditures, and political advertising.

L. E. AYLESWORTH.

Proportional Representation.[1] This fundamental phase of the problem of electoral reform, after being advocated and discussed for a half century, has been making remarkable progress in recent years, especially the last two. The principle seems to have received its first application in Denmark in 1855, where it has been continuously used, since 1867, in the election of 54 of the 66 members of the landsthing or upper chamber of the riksdag. In 1891 it was first applied in Switzerland by each of the cantons of Ticino and Neuchâtel, to the election of its grand council or unicameral legislature. By 1895 Geneva, Zug and Solothurn had taken the same step; also Fribourg for municipal elections only; Berne adopted it for the election of its municipal council in 1899; Basel, for its grand council in 1905. Since 1899 Belgium has used the "list system" with the "single vote" and the "d'Hondt quota" in the election of all the members of both chambers of its parliament.

By its new electoral law of 1900, Japan abolished the limited vote in use since 1889, and adopted a proportional system, whereby the 379 members of its house of commons are elected from 47 multiple districts of from five to fifteen representatives each, every elector to have one single non-transferable vote. In 1905 Moravia applied the proportional method to the election of members of its provincial diet chosen by two of the five electoral classes.

Beginning with 1906 the development has been much more rapid and significant. In that year both Finland and Württemberg introduced proportional representation; the former, in the election from only 16 districts of the 200 members of its new unicameral diet; the latter, in the election not only of members of its diet, but also of municipal councils in towns of over 10,000 inhabitants. The following year it was adopted by Sweden, Tasmania, and the seventh Swiss canton, Schwyz, in the choice of members of its grand council. In this year the first elections under the new system in Finland and Württemberg were conducted with marked success. Thus far in 1908 Cuba and Oregon have instituted the proportional system, and Denmark has extended its application to municipal elections.

[1] Only truly proportional systems will be considered. mere preferential voting in single member districts, as well as the limited and the cumulative vote in multiple districts, however analogous in principle, will be excluded as non-proportional.

Legislation initiating this principle is pending, or legislative opinion in its favor is rapidly crystallizing, in several other countries. In Saxony proportional representation is included in the new electoral proposals of the government. In Holland a constitutional commission has recommended a change to the new system, and the Dutch government has introduced a bill to amend the fundamental law so as to make this possible. In England the municipal representation bill, applying this principle to the election of municipal councils, has passed the house of lords and now awaits the action of the commons. In May Mr. Asquith announced the intention of the government before leaving office "to produce a sweeping measure of electoral reform." This has spurred the revivified English Proportional Representation Society to redoubled zeal and efforts in its propaganda. Both public and legislative opinion is being steadily won to the principle: (1) By the influence of its successful working in practice, especially in Tasmania, Belgium, Finland and Württemberg; (2) By the discontent with the results of the increasing "three-cornered contests" in working the return of members of parliament by minorities and the defeat of prominent parliamentary leaders; (3) By a new realization of the dependence of social well-being on the more scientific and equitable treatment of minorities. In France the adoption of this principle is "the object of an active parliamentary campaign being waged under the auspices of the electoral reform party led by M. M. Krantz and Charles Benoist." A "group of 253 deputies of all parties from the extreme right to the socialists (including M. Jaurès) are avowed partisans of the reform." The commission du suffrage universel, a standing committee of the chamber of deputies, and a committee of the municipal council of Paris have each recently recommended the institution of the proportional system. With legislative opinion so far developed one may expect these recommendations to be embodied in actual legislation at no distant date.

Oregon is the first of our States and the second Anglo-Saxon community, to adopt the proportional principle. A constitutional amendment providing therefor was initiated by popular petition, and adopted by the referendum, June 1, 1908, by a vote of 48,868 to 34,128. "Oregon's house of representatives is now (February, 1908) composed of 59 republicans and one democrat; but if every organized political party was represented in proportion to its voters in the State at the last election, there would be about 33 republican, 20 democrat, 4 socialist and 3 prohibition members. Since 1893 the republicans have always had from 44 to 59 of the 60 representatives, though in 1894 and 1896 the vote of

that party in the State was less than one-half of all the votes cast." The adoption under these conditions of a measure that will deprive the dominant party of its monopoly of the legislature and commission offices, is a significant index of the new political spirit of the voters, and of the working of the new political institutions. This amendment does not itself adopt, but permits the adoption by law of any system of proportional representation by removing all legal obstacles barring the one question of "a republican form of government." In the case of all plural elective bodies "provision may be made for elections by equal proportional representation of all the voters." Every elector may be restricted to a single vote in plural elections or districts, with the privilege of a "direct or indirect expression of his first, second or additional choices among the candidates." A system of preferential, or alternative, voting in filling singular offices is authorized so "that the person elected shall be the final choice of a majority of the electors voting for candidates for that office." Finally, "these principles may be applied by laws" not merely to elections, but also "to nominations by political parties and organizations."

Tasmania, "the first Anglo-Saxon community to adopt a truly democratic method of representation," introduced the system in two plural districts by an act of 1896. One commonwealth and two State elections were held before this part of the act was indirectly repealed by the abolition of the multiple districts in 1901. Now, "after a general election at which the ministry which had abolished the system had been defeated," the principle has been reaffirmed and readopted on a wider scale by the new electoral act of November, 1907. The "Hare-Spence," or Tasmanian system is the one adopted. The members of the State assembly are to be chosen from 5 districts, each electing 6 assemblymen; those of the State council, from 15 districts, one of which elects 3 councilors, another 2, and the other 13, one each. The proportional method is applied in the plural, the preferential vote in the singular districts.

In Sweden, after prolonged discussion, three electoral reform bills embodying and applying the proportional principle were laid before both chambers of the riksdag by the conservative ministry in February, 1907, and had passed both houses in November of the same year. One of these bills amends several sections of "the fundamental constitutional law of Sweden," and also of the "organic law of the Diet." Another modifies certain provisions of "the organic law for county (or provincial) councils." Hence these measures must be confirmed by the riksdag in 1909, after the election of a new folkenthing, or lower house, before they

have the force of law. But it is reported on good authority that "there is not the slightest doubt about the confirmation." This done, the new laws will "take effect from the year 1910." They apply the proportional method to elections for both chambers of the riksdag for the 25 county (or provincial) councils and for the five municipal councils. The landsthing or upper house is to be chosen indirectly but proportionally by these councils. The 230 members of the folkenthing are to be chosen directly by universal suffrage in plural districts electing from 3 to 6 or 7 representatives each.

The Cuban constitution of 1901 prescribes that "rules and procedure shall be provided by statute that shall assure the intervention of the minorities in the formation of the census of electors and in other electoral operations and their representation in the house of representatives in provincial councils and in "*ayunta mientos*" or municipal councils. In December, 1907, the law advisory commission completed the draft of a new electoral law which carries out this constitutional requirement by adopting the proportional system rather than that of the limited or the cumulative vote. This law became effective April 1, 1908, by formal decree of the provisional governor. The first elections under it of provincial and municipal councillors were held August 1, and the first for representatives in congress have been announced for November 14, 1908. The system adopted is that of the "free list" with the "multiple vote" and "simple quota." Each of the six provinces forms an electoral unit or district for the choice of provincial councillors and a number of representatives to be determined by population. In both cases one-half the total number are elected every two years. Each municipality likewise constitutes an electoral unit for the choice of municipal councilmen varying in number from 5 to 27 according to population.

In Tasmania the names of candidates are all to be arranged on the ballot alphabetically under the title of the office. There is no party designation and no separate lists or columns. No candidate's name will be printed on the ballot without a nomination paper signed by at least two qualified electors, a deposit of £25 and the written consent of the nominee to act if elected. If the candidate receives one-fifth of the quota of votes required to elect, the deposit is returned, otherwise it is forfeited, a suggestive device to keep within bounds the number of candidates. If the number of nominees just equals the seats to be filled and no more the returning officer is to declare them duly elected without the formality of a poll. The Cuban law provides for two classes of nominations, "party" and "independent." Party nominations "may

be made only by the convention or assembly of delegates of a political party" which at the last preceding election polled 2 per cent, in the municipality, or 4 in the province, of all the votes cast. Independent nominations by lesser political groups may be made by petitions signed by a number of electors varying according to population. Tickets are "complete" or "incomplete" according as they do, or do not, contain a candidate for all positions to be filled. Each party or independent group is legally free to nominate few or many candidates so it does not exceed the number to be elected, but must make its ticket "complete" to be entitled to a "party circle" at the top. The system of proportional canvass also places a premium upon the "complete ticket." All "incomplete" tickets must be so headed. The tickets or lists of candidates of the several parties and groups are to be arranged on the ballot in the parallel columns, with one additional blank column. The order of names on each ticket is to be the same as that on the petitions or certificates of nomination. The Swedish law makes no provision for nominations, and the names of candidates are not to be printed on the ballots.

Each elector in Tasmania has one single transferable vote, that is, only one vote that finally counts. He records his vote by placing within the squares opposite the names of three candidates the numbers 1, 2 and 3, so as to indicate his order of preference. The voter may, if he wishes, indicate further preferences by using other numbers next in numerical order. In Cuba the "multiple vote" is used, every elector having one vote for each of as many candidates as there are persons to be elected. The elector may vote either a "straight ticket" or a "split or mixed ticket," at his option. To vote a "straight ticket" he simply places a cross mark in the circle at the head of the ticket whose candidates he wishes to support. To vote a "split or mixed ticket" he must mark the printed name of each candidate for whom he desires to vote, or write other names in the "blank column" under the proper title, not exceeding in number the seats to be filled. The Swedish method of voting is termed the "free method with indication of party." As in Cuba, though by a different method, independent voting is encouraged, and not discouraged as it is under the Belgian system. Each elector is to write the names of his candidates, on the ballot consecutively in the order of his preference. In number they may equal two more than are to be elected. If the voter wishes to vote with a party he may insert the party name at the top of the ballot. If the list be divided by a line, only those above the line will be considered for return or actual election. If no such line appears, candidates to the number to be elected, counting

down from the top, will be returned. In either case the remaining candidates are to be substitutes for filling vacancies.

Each electoral district in Tasmania with more than one polling place is to have a "chief polling place" in charge of a "returning officer for the district," to whom returns are to be made from the other polling places therein. The presiding officer of each sub-polling place is: (1) to count the first choices for the different candidates and place them in separate parcels according to their names, also counting and making a separate parcel of the rejected ballots; (2) to transmit to the district returning officer by telegraph or "in some other expeditious manner" the number (*a*) of first choices for each candidate and (*b*) of rejected ballots; (3) to seal all of the parcels and transmit them "securely fastened" to the same officer. In Cuba "the scrutiny of the ballot" is made by the electoral board of each "college," or voting precinct. The ballots are first arranged in two groups of "straight ballots" and "mixed ballots." Then the "straight ballots" are redivided into separate groups for each of the several party and independent tickets. Next the votes are counted and tallied. Every candidate is first credited with one vote for each of the "straight ballots" for his ticket; then with any additional votes given him on "mixed ballots." Lastly a return, or abstract of the results of the count, is prepared, and both it and the records of the election transmitted to the municipal or the provincial electoral board, according to the character of the election. Under the Swedish act all party ballots are to be collected into groups according to the different party indications, the same as in Cuba. Similarly all non-party ballots are grouped together, but are known as the "free-group."

All three laws provide for a proportional canvass of votes and allotment of seats, or elected members, but the methods used are very different. The Tasmanian process guards most carefully, by means of transfers, against the waste of votes, and consequently is the most lengthy and complex. The district returning officer having combined the returns from all the polling places, the next step is to find the "quota," or number of votes required to elect a candidate. Tasmania uses the "group quota" which is found by dividing the aggregate of first choices for all candidates by one more than the number to be elected and adding one to the quotient, disregarding any remainder. All candidates having a number of votes equal to or in excess of the quota are then declared elected. If at this stage or at the close of any later count, the number of valid votes of a candidate exactly equals the quota they are all to be

set aside as finally dealt with. If a "quota" of first choice votes is not received by as many candidates as are to be elected, the "surplus" (that is, the number of votes in excess of the quota) of each of the elected candidates is then to be transferred to the unelected candidates "next in order of the voters respective preferences." Instead of adopting the Hare method of counting and distributing only those particular votes drawn from the ballot box after the candidate has obtained a quota, the Tasmanian act provides that *all* of his votes are to be counted and transferred at the fractional value that his "surplus" bears to his total vote. Thus any element of chance that may exist under the Hare method is wholly eliminated. The process prescribed is as follows: (1) reëxamine the votes of the elected candidate and count the second or next consecutive choices for each unelected candidate; (2) find the "transfer value" by dividing the "surplus" by the total vote; (3) multiply the votes given each of the unelected candidates by this "transfer value" to ascertain his proportionate share and add it to his former vote. This process is to be continued until all "surpluses" are distributed unless the required number of persons are sooner elected. If no candidate or fewer than are to be elected, has a quota after the count of first choices and transfer of all "surpluses" the candidate lowest on the poll is to be excluded and his votes distributed among the others according to the voters' next preferences. His original, or first choice, votes are to be first transferred at a value of *one* each; his other votes are then to be dealt with "in the order in which, and at the transfer value at which he obtained them." Where a "surplus" exists after any such distribution it is to be transferred before any other candidate is excluded. This process of elimination is to be repeated, if necessary, until all are eliminated except the number to be elected. "The unexcluded candidates, who have not already been so declared, shall then be declared elected," even though they do not have a "quota" of votes.

In Cuba the proportional canvass is made by the various municipal and provincial electoral boards for the municipal and general elections respectively. After consolidating the returns from the various "colleges" the "quota of representation" is to be found by dividing "the sum of all the votes cast for all the candidates" by the number of seats to be filled. The "party quota" or number of seats each group is entitled to, is next determined by dividing the votes cast for all the candidates of each group by the "quota of representation." If the sum of these "party quotas" is less than the number of persons to be elected, the seats still vacant are to be allotted to the different groups in the order of size of their vote

remainders, except that no seat is to be assigned to any group not having at least the quota of votes. This provision seems rather out of harmony with the rest of the law and with the proportional principle, for it denies a representative to a group with one vote less than the quota, while granting other groups an additional representative for a mere fraction of the quota. The law does not expressly state in what order the seats allotted a group are to be distributed among its candidates. But the appended "illustration of the operation of the foregoing rules" shows the intent to be that the seats shall go in order to the candidates receiving the highest votes. Only in case of a tie is the order of names on the official ballot to be the deciding factor. Thus the independent voters have the power to decide which of the candidates of any one group, or even of all the groups, are to obtain seats, and intelligent and discriminating voting is encouraged.

Under the Swedish law, as well as the Cuban, there is no transfer of votes. The "d'Hondt quota," the most complex but probably the most accurate, is to be used to determine the allotment of seats to the different groups. The total for comparison is to be for each party "the numerical total of the group;" for the "free-group" the vote of its highest candidate. By successive countings within each group a list of the candidates is "arranged proportionally, not by majority principles according to the votes obtained and to the order of the names in the ballot papers." The seats allotted each group go to its candidates in the sequence in which they are thus listed. It is said that "the system appears to succeed in avoiding the characteristic evils of the 'list' systems without however adopting the method of the transferable vote."

The Tasmanian law, unlike the Cuban and the Swedish, makes no provision for vacancies except by holding a new election. According to the Cuban law the non-elected candidates of a group are to be the alternates of those it elects, succeeding to vacancies among them in the order of the vote each receives, unless the governing authority of the group submits to the proper electoral board proof that the alternate next in line is no longer affiliated therewith. By the Swedish law a vacancy occurring in a group's representation is to be filled from its non-elected candidates by a new count of votes within the group.

LEON E. AYLESWORTH.

Public Utilities. The regulation and control of public service corporations by State commission or other State authorities, and the extension of such regulation and control when already adopted, was given much

attention by several legislatures at the sessions of 1908. The net results, in laws enacted, however, was slight.

New York. In New York Governor Hughes with the approval of the public service commission recommended that telegraph and telephone companies be placed under the control of the commission. Bills to that end were introduced, but failed of passage. At the special session which convened May 11, 1908, the governor renewed his recommendation and again the legislature refused, the bills being defeated in the assembly in each session.

Ohio. The Ohio legislature also considered a public utility measure. A railroad commission law almost identical with the La Follette law of Wisconsin had been enacted by the legislature of 1906. A measure was introduced this year closely following the provision of the new public utility law of Wisconsin, with all of its advanced features, including the indeterminate franchise and uniform accounting provisions. The bill failed of enactment.

New Jersey. The New Jersey legislature considered several bills which proposed to give control of all public utilities to a State commission. New Jersey has problems peculiar to itself. Its proximity to the great cities of New York and Philadelphia and its position in the path of travel make a network of railways, street railways, electric and other utility works inevitable. The density of population and its rapid increase render the problem still more complicated. The political conditions moreover, do not conduce to a favorable settlement of such problems as the control of public service corporations. At the session of 1907 a railroad commission was established with exceedingly limited and infirm powers. The commission could regulate service but not rates. The law was carelessly drawn and ill-considered. The attorney-general of the State said, in an opinion to the commission, "the notorious haste with which it was prepared and passed on the eve of the adjournment of the legislature has left much to be desired in the way of supplement or amendment." Proposals for strengthening the weak places were made by the commission, but the majority of the commission refused to take advanced ground on the matter of extending their powers to rate making. One member advocated a public utility commission with adequate power to regulate service and rates. The remaining two were reactionary, doubting the wisdom of giving rate making power to a commission. The majority did not express an opinion in regard to the creation of a public utilities commission, but the inference from their report was strongly against it. Three measures were introduced. One

bill comformed to the public utility law of Texas with its provisions for court adjudication of rates. Another was modeled on the New York law of 1907. A third gave power to a commission to regulate the service of public utility corporations, but gave no rate making power. Opinion in the legislature followed the cleavage of opinion in the railroad commission. A deadlock ensued between the senate and the house of assembly and as a result no legislation was enacted.

Porto Rico. The only important public utility legislation enacted during the year was the public service corporation act of Porto Rico which was passed by the legislative assembly, and approved March 12, 1908. The act applies to all public service corporations "owning, operating, managing or controlling any railroad, street railroad, express, train, sleeping car, freight, freight line, ferry property or enterprise" and all equipment and services connected therewith, which are operated by virtue of a franchise or concession as common carriers, and to all plants for the manufacture and distribution of illuminating gas, or electricity for light, heat, or power, or for selling or distributing water for any purpose, or any plant for the conveyance of messages for compensation. The executive council of the island is vested with control over such corporations. The council is given power to inquire into the management and business of all public service corporations, touching in particular their organization and finances in detail, character of service, charges and all agreements with persons or corporations relating to its services. Examination may be made by the council or by a committee or subcommittee of its members and full power is given to compel the attendance and testimony of witnesses, production of books and so forth. The council may require annual reports, covering the details of the organization, property, finances and management, in such form and at such times as they may determine.

On or before July 1, 1908, all public service corporations not acting under a franchise granted by the executive council, are required to submit schedules of charges, relative to conditions of service, enforced by them and such as they desire to continue in the future. The executive council may then examine and amend in any manner deemed necessary and promulgate the schedule of charges which are to be enforced by the corporation in the future. This section was made to apply only to corporations not created by ordinances of the executive council. The same power already existed to regulate public service corporations whose franchises were given by the executive council, by virtue of section three of the act of congress passed May 1, 1900, which required the executive

council to regulate charges in the franchises or concessions granted. All power hitherto granted to any authority in the island to regulate public service corporations are by this act expressly transferred to the executive council.

Discrimination in rates or service concessions and rebates in any form or by any pretense whatever are forbidden under heavy penalties. The executive council may issue general orders relative to conditions of service especially for the protection or promotion of the health, security, comfort and convenience of the public and may in the interest of the people or the corporation in emergent cases to prevent injury suspend any rate, schedule, or order affecting one or more public service corporation or any portion thereof.

Complaints may be made to the executive council by any person or corporations, setting forth the facts in writing. The council thereupon submits a copy of the complaint to the public service corporation complained of, and if satisfactory answer or action is not secured, the council may, if there appears to be reasonable ground, investigate the charges and make such orders as they may deem proper.

The law requires that "every public service corporation shall furnish such service and facilities as shall be safe, adequate, and sufficient," and the executive council is given full power to enforce the provision by investigation and proper orders.

Penalties are provided against public service corporations and their responsible officers for violation of the provisions of the act or, of orders of, the executive council; likewise for omissions and falsifications in reports or statements made to the council. All "regulations, orders or resolutions of a general nature" issued by the executive council take effect immediately, but all such orders must be submitted to the legislative assembly at the next session. If approved by the asembly they become permanent in the manner approved, but if not approved they are to be no longer in force.

The law seems to omit no provision which could render it more effective. The executive council is vested with full power in the words of the law "equitably and effectively to regulate the charges of said corporations and the conditions of service." The law presents one new feature in the regulation of public service corporations, namely, the participation of the legislative assembly through their required approval of all general orders of the executive council affecting public service corporations.

JOHN A. LAPP.

Race Track Gambling. The bills prohibiting gambling on the tracks of authorized racing associations in New York were defeated at the regular session by a tie vote in the senate. Governor Hughes called a special session May 11, and ordered a special election in the 47th senatorial district in which there was a vacancy. The election was favorable to the governor's program and the bills were passed, the senate vote being 26 to 25. Louisiana passed a similar law after a somewhat protracted struggle. Kentucky enacted an anti-poolselling law, but exempted race tracks from its operation.

JOHN A. LAPP.

Railroad Tri-partnerships. A bill (house no. 1080), modeled after the English plan and entitled, "An act to establish a partnership among the consumers, capitalists, and workers of certain railroads and street railways," has been introduced in the Massachusetts legislature. Its object is to provide for the sliding scale between the corporation and the customers and coöperation for the workers, and is made to apply to all railroad companies which have had fifty miles or more, and all street railway companies which have had twenty-five miles or more of trackage in operation within the State during the last preceding year. Both domestic and foreign corporations doing business within the commonwealth are included and all such companies are to be under the supervision and control of the board of railroad commissioners.

THE CUSTOMER AND THE CAPITALIST. The relation between the customer and capitalist is first taken up and the terms used carefully defined. Only the more important definitions need be repeated here.

"Standard charge" means the prevailing net charge in force in the locality on the first day of January, 1908.

"Standard dividends" means dividends equal to the net rental value of the same or like property at the prevailing local rate.

"Net rental value" means the gross rental value of the corporation's property, less fair allowances for repairs, depreciations, and insurance.

"Examination period" means the period of time covered by each examination of the corporation books. This period is to be as near six months as may be.

"Net earnings" means the earnings which remain after deducting from the gross earnings, all expenses, ordinary wages, and reserve funds, allowed by this act.

"Extra earnings" means that portion of the net earnings in excess of the standard dividends.

Standard charges and dividends, the basis for all future action, are defined and set up by the board of railroad commissioners. For each and every deduction of 1 per cent in the maximum net charge below the standard charge, the corporation may declare and pay extra dividends amounting to, but not exceeding, 2 per cent of the standard dividends for the same time. If extra earnings exceeding 10 per cent of the standard dividends accrue during any examination period, and the maximum net charge has exceeded the standard charge during that period, or any part of it, the maximum net charge for the following period is not to exceed the standard charge. All property which is owned by the corporation and used in its business, and is reasonably necessary for the proper transaction of its business within the commonwealth, but none other, is to form the basis for the board in settling the net rental value. If property without the State contributes to the earnings received from corporate services performed within the State such property is to constitute part of the corporation's property, but is to be kept separate and distinct from the corporation's property situated within the State. The possession and use of property under a lease which has twenty years or more to run before its termination, is to be deemed equivalent to ownership.

All earnings derived from property as above defined and from services performed within the commonwealth, are to form the basis in fixing the net earnings, the extra earnings, the standard dividends, the extra dividends of the stock holders, and the extra wages of the labor partners.

THE CAPITALIST AND THE WORKER. Next, the relation between the capitalist and the worker and the distribution of the net earnings between these two factors are considered. The terms used are carefully defined.

"Worker" means a person who does work of any kind, and includes every person, from the president of the corporation to the lowest manual worker.

"Labor partner" means a worker who becomes a partner under this act.

"Standard wages" means wages equal to the wages paid for the same or like services at the prevailing local rate, except as otherwise provided by the act.

"Extra wages" means the portion of the extra earnings which is the property of the labor partners.

"Ordinary dividends" means dividends not exceeding the standard dividends, payable on account of capital services, exclusive of extra dividends.

"Extra dividends" means the portion of the extra earnings which is the property of the capital partners.

During the first four months of each term of six months' operation under the act, the corporation by an instrument in writing filed with the board of railroad commissioners, must offer to enter into an industrial partnership with 20 per cent, or more, of its workers; the workers accepting the corporation's offer are to be entitled to the benefits as labor partners, beginning with the examination period next after filing their acceptance. The corporation's offer is to be repeated from term to term to different workers until 80 per cent have become, or until 90 per cent have had an opportunity to become labor partners. If at any time after 80 per cent of the workers have become labor partners, the number falls below that percentage, the corporation must repeat its offer. When this partnership is formed, the question of wages is considered, and if the ordinary wages of the labor partners are less than the standard wages, the ordinary dividends of the stockholders must, upon the petition of 10 per cent or more of the labor partners to the board, be ratably reduced below the standard dividends, unless the corporation raises the ordinary wages to the level of the standard wages.

Distribution of Extra Earnings. The extra earnings for each examination period are to constitute a trust fund for the benefit of the capital partners and the labor partners of each corporation, and be divided between the corporation and the labor partners in the ratio of the amount of the standard dividends to the amount of the standard wages. That portion of the extra earnings belonging to the labor partners is to be divided among them in the proportion which the amount of each labor partner's standard wages bears to the total amount of the standard wages for the examination period in question. If the extra earnings for an examination period exceed 20 per cent of the sum of the standard dividends plus the standard wages of the labor partners, that surplus or excess above 20 per cent, or a sufficient part of it, to cover any deficit in the corporation's share of the net earnings below the amount of the standard dividends which may have occurred since the corporation came under this act, is to be the property of the corporation, and may be paid out to the then stockholders as extra dividends, but if the corporation's share of the net earnings has been as much as the amount of the standard dividends since the corporation came under this act, such surplus or excess above 20 per cent is to be divided between the corporation and the labor partners in the ratio of the amount of the standard dividends to the amount of the standard wages of the labor partners for the same examination period.

The industrial partnership may be dissolved at any time, or it may be suspended for a definite or indefinite term of mutual consent without prior notice. It may also be dissolved by a notice in writing given by either party at least thirty days before the dissolution is to take effect, or if either party has a good cause, the thirty days notice is not necessary. The board of railroad commissioners may hear and decide, and upon petition by the corporation or by ten labor partners, must hear and decide, all questions relating to dissolution and notice.

Powers and Duties of the Board of Railroad Commissioners. The board of railroad commissioners determines and declares what was the prevailing net charge in force in the locality on the first day of January, 1908, for each and every class or kind of corporate services, and such charge for each class or kind of corporate services is to be the standard charge. The board is also to determine and declare what is the prevailing local rate of wages for each and every class or kind of labor services performed for the corporation, and wages at such rate are to be the standard wages. The board is to have full power and authority to fix and to change the standard dividends of the stockholders to agree with the net rental value of the corporate property at the then prevailing local rate; to fix and to change the standard wages of the labor partners to agree with the then prevailing local rates; to determine the amounts of the net earnings, reserve funds and extra earnings, and to settle the portions of the extra earnings which belong respectively to the corporation and to the labor partners; to decide what has been the actual maximum net charges, and to determine the amounts and percentages of reductions below the standard charges.

Review by the Courts. The corporation, or ten or more customers or ten or more labor partners, who are aggrieved by any ruling of law made under this act by the board, may appeal to the supreme judicial court or to the superior court sitting in equity within and for the county in which the corporation has a usual place of business. The appeal shall be taken within thirty days after the ruling is made public by the board. Upon such appeal the court may affirm, modify or reverse any ruling of law, as law and justice may require, and may make such order as to costs as may seem proper.

Such, in some detail, are the provisions of the proposed law. In short, it proposes to place the entire control of the railroads and street railways coming under its provisions in the hands of the board of railroad commissioners, and—if the laborers are willing—to force the corporation to enter into coöperation with them.

In the first place the standard charges, dividends, and wages are set up and then, if the corporation wishes to increase its dividends, it must reduce its maximum net charges. The extra earnings, if there is a labor partnership, are to be divided between the corporation and the labor partners in the ratio of the amount of the standard dividends to the amount of the standard wages. In the end, the whole matter is to be subject to review by the court.

ROBERT ARGYLL CAMPBELL.

The French Rest Law. The French commission of labor has proposed (March 12, 1908) a modification of the rest law of July 13, 1906. The commission entertained numerous delegations of employers and workingmen.

Provision is made that no worker or employer may work more than six days a week. A new provision is that the employers and employees of any industry or any similar or related industries by mutual agreement are to choose some one of the modes of application of the seventh day rest allowed by the law. The mode may be determined according to the interest of the industry. The agreement is to cover all the employers and employees of an industry or it may be applied in a given district.

The reason for this provision is that the commission was not willing to accede to the desire of the delegations that the laws be applied between the employer and employee, because within a particular establishment the parties are not of equal strength. When the interested parties fail to choose a mode of application of the law, the public administration will determine upon a necessary measure after separate consultation with employers and employees. The boundaries of industries and districts will be fixed by ministerial orders.

J. HARDING UNDERWOOD.

Trades and Handicrafts. A referendum vote in Switzerland taken July 5, 1908, secured an amendment to the federal constitution which gives the federal government power to enact legislation relating to trades and handicrafts. Under this amendment it is expected that the federal government will take action to secure a unification of cantonal legislation relating to conditions of labor, industrial disputes, and related subjects.

NEWS AND NOTES

The Initiative, Referendum and Popular Election of Senators in Oregon

GEORGE A. THATCHER

At the June election of 1906, two United States senators were chosen by popular vote, and the legislature, following out the provisions of the primary law, elected the peoples' choice.

At the general election this year, there was a complication of circumstances which threatened to wreck the new system of choosing senators. The old-time leaders of the republican party decided that there was too much risk in having members of the legislature promise to elect the peoples' choice for senator and made determined warfare upon Statement No. 1 of the primary law, which involves that promise. Republican county conventions, which were called to establish harmony, wrangled over the question without coming to any definite conclusion except in one or two instances. There was a certain hesitancy on the part of the candidate for the legislature in signing Statement No 1 in the face of the expressions of contempt and ridicule by the newspaper opponents of the system. However, there were enough Statement No. 1 men nominated and elected from both parties to give a majority in each house. The republican party has a majority of about thirty thousand in the State and elects the major portion of both houses.

In the election of senator, the republican candidate who was nominated at the primaries failed to announce his position on Statement No. 1 until some weeks had passed, which undoubtedly weakened his campaign. The democratic candidate, who is perhaps the most popular man in the State, has made his political reputation as an upholder of the initiative and referendum and the popular election of senators. He made an aggressive campaign and won the election by 1522 votes. There was an element in the republican party that worked for his success in the hope of throwing the election into the republican legislature, with the idea that the plan of the primary law would collapse under party pressure. Most of the Statement No. 1 republicans have announced

their intention of standing by their promise, in which case the fight will simply have strengthened the new institution instead of destroying it. The sentiment among the voters is overwhelming, though the politicians are not so single-minded. The best illustration of that is to be found in the vote on a law introduced by initiative petition directing the members of the legislature to vote for the people's choice for senator. The law cannot be claimed to be constitutional in view of the language of the national Constitution, but it polled the second biggest vote of any of the nineteen measures submitted to the people. It was adopted by a vote of 69,668 for, to 21,162 against. Naturally the choice of senator will not always be made from the party having a majority in the State, but if public sentiment justifies a popular choice the politicians will have to submit. There is some talk of the method being unconstitutional, but it is hard to see how the usual form of election in the legislature can be repudiated because ante-election promises have been kept by the legislatures.

The election was a crucial one in another respect, and that was in the number and nature of the measures submitted to the voters at the polls. There were four measures referred by the legislature to the people. An amendment to the constitution to increase the pay of members of the legislature from $3 a day to $400 for the regular session was defeated by a vote of 19,664 for, to 68,892 against. An amendment permitting State institutions to be located at other places than the capital was adopted by a vote of 41,975 for, to 40,868 against. An amendment increasing the number of judges of the supreme court and transferring probate business to the circuit courts was defeated by a vote of 30,243 for, to 50,591 against. An amendment changing the time of State elections from June to November, was adopted by a vote of 65,728 for, to 18,590 against.

There were four acts of the last legislature on which referendum petitions had been filed. The act giving the sheriff entire control of prisoners with the rate prescribed for meals, in counties having over 100,000 population, was approved by 60,443 for, to 30,033 against. An act virtually compelling railroads to give free passes to all State, county and district officers, which repealed the anti-pass law adopted by the voters at the polls in 1906, was defeated by a vote of 28,856 for, to 59,406 against. An act appropriating $100,000 for armories for the State militia was defeated by a vote of 33,507 for, to 54,848 against. An act increasing the annual appropriation for the State university to $125,000 a year was approved by a vote of 44,115 for, to 40,535 against.

There were introduced by initiative petition six amendments to the Constitution and five laws. The woman suffrage amendment received the largest vote of any measure considered as it did two years ago. It was defeated by a vote of 36,858 for, to 58,507 against. The majority against the measure in 1906 was 10,173. This year it was more than twice as large. The women of the State are divided on the question which may account for the fact that the amendment has been defeated four times. The amendment in the nature of a single tax aroused great interest. It exempted all property from taxation except land, business blocks, improvement of public service corporations, money and credits. That would have left dwellings, furniture, manufacturing plants, live stock, implements and improvements generally, free from taxes. The amendment was much discussed and finally defeated by a vote of 32,066 for, to 60,871 against. An amendment giving municipalities independence of the State criminal laws in the matter of regulating pool rooms, saloons and gambling was defeated by a vote of 39,442 for, to 52,346 against. An amendment permitting the legislature to pass a law for the recall of public officers on the filing of a petition for the purpose was adopted by a vote of 58,381 for, to 30,002 against. The amendment provided that not more than 25 per cent of the voters should be required to sign such petition for a recall and a new election. No official may be discharged until after six months' service except members of the legislature where resignation may be demanded five days after the beginning of their first session. The reason for the recall shall be printed on the sample ballot within the limit of 200 words and the official recalled shall be permitted the same number of words in defense.

An amendment permitting the legislature to pass a law providing for proportional representation was adopted by a vote of 48,868 for, to 34,128 against. Provision may be made for the expression of first, second and additional choices of a candidate by the voters. This amendment is very possibly the most important measure adopted in Oregon this year, but the difficulties in the way of securing an effective law, as indicated by the various experiments in the United States and elsewhere, leaves the question more or less open to debate. However, the spirit underlying the gerrymander cannot be considered as permanently established in a democracy. An amendment withdrawing the power of prosecuting attorneys to file an information for crime was adopted by a vote of 52,214 for, to 28,487 against.

Of the laws proposed by initiative petition, the one directing the legislature to vote for the people's choice for senator has been mentioned.

An act to divide a county was adopted by a vote of 43,918 for, to 26,778 against. An amendment adopted in 1906 giving absolute home rule to municipalities, subject to the constitution and criminal laws, according to a recent decision of the supreme court, deprives the legislature of the power of creating new counties. A corrupt practices act was adopted by a vote of 54,042 for, to 31,301 against. It is an unusually long and detailed act to be adopted at the polls, but the last legislature declined to act in the matter. The intention of the act is to place poor men on an equality with rich men in making a campaign for public office. The act limits expenditures to 15 per cent of a year's salary in the nominating campaign and 10 per cent in the electing campaign, aside from money paid to the State for printing. The State is required to circul te campaign literature. Corporation contributions are forbidden, and detailed expense accounts are required to be filed by the candidates. A candidate's friends may speak and write for him without pay, or publish writings, but the difficulties in the way of giving much assistance are very great. All solicitation on election day is absolutely barred. There were two laws introduced to regulate the salmon fisheries of the Columbia river. The lower-river fishermen proposed an act to abolish all the gear of the upper-river fishermen. It was adopted by a vote of 58,130 for, to 30,280 against. The upper-river fishermen proposed a law limiting the length of seines and abolishing fishing in the navigable channels of the lower river and stopping fishing at night in all other portions of the river. The law was adopted by a vote of 46,582 for, to 40,720 against. The legislature has never succeeded in securing a suitable law regulating the fisheries because of the conflicting interests. The "interests" tried to regulate each other this year and the voters agreed to both propositions. It may pave the way for a reasonable law on the subject by the legislature.

The election on the whole did not commit the people to any manifest absurdities. The distinctly bad measures were defeated. The measures looking towards desirable reforms cannot be condemned until they have been tried. Two years ago, the measures submitted received on an average 75 per cent of the total vote cast. This year with nineteen measures to be voted upon all over the State besides some local questions and various candidates, the average vote on legislative questions and amendments was 74 per cent of the total. The ballot which I marked on June 1 called for a vote on thirty-seven candidates for office and twenty questions of laws and amendments. The prohibition movement added a number of counties to the "dry" list this year.

There is no feeling in Oregon that the people are going to usurp the business of the legislature, though the ballot this year does look like it. The legislature has all the work it can do and if it is so inclined can forestall legislation at the polls, except upon propositions like the single tax. Voting on such questions is the penalty of popular law-making, but the results are reassuring. There is no question of the continued interest of the people and the average public opinion seems to be at least as sensible as what Mr. F. N. Judson has called the deliberate representative judgment.

Personal and Bibliographical

J. W. GARNER

In order that, beginning with 1909, the volume of the Review may correspond with the calendar year, no August, 1908, number was issued. The present number completes volume two.

The Fifth Annual Meeting of the American Political Science Association will be held in Washington, D. C., and Richmond, Va., December 28 to 31. At the first session, to be held jointly with the American Historical Association, Monday evening, December 28, in Washington, the President of the Association, Mr. James Bryce, will deliver his address. The Tuesday morning session, also to be held in Washington, will be devoted to papers dealing with questions of international law. In the afternoon a special train will take members of the two associations to Richmond, where sessions will be held until Thursday afternoon, the general topics being recent State constitutions, municipal government, the increase of federal power and influence, the problems of colonial government as revealed by ten years' experience in Porto Rico and the Philippines, and the teaching of political science.

The recent death of Prof. Felix Stoerk in his fifty-seventh year was a distinct loss to the science of international law and politics. Dr. Stoerk was born in Austria and received his doctorate from the University of Vienna. From 1878 to the time of his death he was a prolific contributor to the literature of political science and international law. It was to the *Revue de droit international et de législation comparée* and the *Journal de droit international privé* that most of his contributions were made, though he occasionally published articles in other periodicals. In

1879 he published a work entitled *Option und Plebiszit bei Eroberungen und Gebietszessionen* which increased his reputation, and three years later he received a call to the chair of constitutional and international law at Greifswald, a position which he held until his death. In 1886 with Laband of Strassburg he founded the *Archiv für öffentliches Recht* and in the following year he made two notable contributions to Holtzendorff's *Handbuch des Völkerrechts* under the titles *Das offene Meer* and *Staats Untertanen und Fremde.* In the same year he undertook the task of bringing up to date Martens' *Recueil général des traités.* One of his latest works was a study in German constitutional law being a contribution to the Lippe-Detmold succession controversy under the title *Die agnatische Thronfolge im Fürstentum Lippe,* published in 1903. His last work was a paper entitled *Völkerrecht und Völkercourtoisie,* contributed to the Laband *Festschriften* recently published and to which reference is made below.

Dr. Gustav Anchütz, professor of constitutional and ecclesiastical law in the University of Heidelberg, has been called to the University of Berlin. Dr. Anschütz is one of the most distinguished of the German publicists. One of his most notable contributions is the article on German Constitutional Law in the *Holtzendorff-Kohler Encyclopædia of Law,* 1904. Dr. Anschütz before going to Heidelberg was a professor at Tübingen.

Dr. Fritz Fleiner, professor of public law at Tübingen, has been called to a similar chair at Heidelberg.

Dr. George Adler, professor of political science in the University of Kiel, died June 11, in Berlin, in the fifty-fifth year of his age.

Adolf Frantz, the distinguished professor of ecclesiastical and constitutional law in the University of Kiel, died in July in the fifty-sixth year of his age. Dr. Frantz was the author of *Die Literatur des Kirchenrechts* and *Lehrbuch des Kirchenrechts.*

Samuel E. Moffett, a member of the American Political Science Association, an editorial writer and an author of various political and economical works, died suddenly at his home in New York, August 1, in his forty-fifth year. He was a native of California, received the Ph.D. degree at Columbia, and at different times was a member of the editorial

staffs of various metropolitan newspapers. At the time of his death he was a member of the editoral staff of *Collier's Weekly*.

Sir William Randal Cremer, founder of the Interparliamentary Union and one of the most active leaders in the peace movement, died on July 22 at the age of seventy. In 1903 he received the Nobel Peace Prize of $40,000 which he gave to the International Arbitration League, of which he had long been secretary.

Dr. Burt Estes Howard has been appointed professor of political science in the Leland Stanford University. Mr. Howard graduated from Western Reserve University and did his graduate work at Harvard, Berlin and Heidelberg, from which latter institution he received the Ph.D. degree in 1904. He is the author of a monograph entitled *Amerikanische Bürgerrecht* and an excellent book on the German Empire published two years ago, and reviewed in the last number of the *Review*.

Mr. Thomas Reed Powell has been appointed associate in political science at the University of Illinois. Mr. Powell is a graduate of the University of Vermont and of the Harvard Law School. He has also completed his residence requirements for the Ph.D. degree at Columbia. In the absence of Professor Goodnow during the past year Mr. Powel had charge of his courses in administrative law and the law of taxation.

The David A. Wells professorship of political science at Williams College, recently made vacant by the death of Henry Loomis Nelson, will be filled for the time by the president, Mr. H. A. Garfield, who it is understood, will do as much teaching in connection with the position as his administrative duties will permit.

Mosei Jakovievich Ostrogorski, the distinguished Russian scholar and the author of *Democracy and the Organization of Political Parties*, published in 1902, has been spending the autumn in the United States studying the American electoral system and the method of conducting a presidential campaign.

Prof. Stephen Leacock, of McGill University, after a year's leave of absence, has resumed his academic duties. During the year Professor Leacock under the auspices of the Rhodes trust, made a tour of the British empire for the purpose of stimulating public interest in some of the important questions of imperial concern in the self-governing colonies.

In Australasia and South Africa, in particular, he delivered many public addresses to university audiences or to gatherings called by the local governing authorities.

Prof. George G. Wilson, of Brown University, and Admiral Charles H. Stockton were the representatives of the United States at the international conference on maritime law which met in London in October. The purpose of the conference was to prepare a body of rules relating to maritime war, the Hague conference having created an international prize court without making any provision as to the law which it should administer. The conference was called by Great Britain and was participated in by delegates from all the great maritime powers. The principal questions considered related mainly to contraband, blockades, the transfer of belligerent merchant ships to neutral flags and the conversion of merchant ships into men-of-war. Professor Wilson will be absent on leave for the next year and his courses will be given in part by Prof. S. C. Mitchell, of Richmond College.

Harold Dexter Hazeltine, a graduate of Brown University, who was recently called to the position of reader in English law in the University of Cambridge, is the author of a monograph entitled *Die Geschichte des Englischen Pfandrechts*, a scholarly contribution to English legal history. It was prepared as a dissertation for the doctor's degree in law at the University of Berlin under the direction of Prof. Otto Gierke. (Breslau: M. and H. Marcus, 1907, pp. xxviii + 372).

Prof. C. W. A. Veditz, who organized the college of the political sciences in George Washington University and who acted as its dean during the past year, has resigned the deanship and will henceforth give his time exclusively to the work of teaching. Pending the election of a new dean, President C. W. Needham will act as director of the college.

Dr. Karl F. Geiser has been appointed professor of political science in Oberlin College. Dr. Geiser is a graduate of an Iowa College, did his graduate work at Yale where he received his doctor's degree in 1900, was also a student at Berlin, 1905–1906, and for several years has held the chair of political science in the Iowa Normal College.

Dr. John P. Dunning, of the University of Oregon, has been appointed research fellow in political science at the University of Pennsylvania.

Mr. Dunning did his graduate work at Princeton, Berlin, Oxford, Paris and Heidelberg, receiving his doctor's degree from the latter university in January, 1908.

Three of the ten delegates appointed by Secretary Root to represent the United States at the first Pan-American scientific congress at Santiago, Chili, December 25 next, are professors of political science. They are Dr. L. S. Rowe, of the University of Pennsylvania, who has been elected chairman of the delegation, Prof. Paul S. Reinsch of Wisconsin, and Prof. Bernard Moses of California. Professor Rowe has been in the Argentine Republic since August, studying the political institutions of that country. Three professors of history are also among the delegates appointed. They are Professors Bingham of Yale, Coolidge of Harvard, and Shepherd of Columbia.

The Bulletin of the International Bureau of American Republics, which, under the management of Mr. John Barrett, Director of the Bureau, has grown to be a very attractive and valuable publication, will hereafter be published monthly in two sections, one exclusively in English and the other in Spanish, Portuguese and French. The change is made to avoid the large amount of duplication and unwieldiness which have heretofore characterized the *Bulletin*. Henceforth, English will be omitted from the foreign edition, and French, Spanish and Portuguese will be omitted from the domestic edition. The subscription price for either edition will be $2 per year in all countries of the union and $2.50 in all others. The July issue is given up mainly to a carefully prepared annual review of Latin-American trade conditions, and constitutes a useful handbook of North and South American commerce.

Mr. Asher C. Hinds' *Parliamentary Precedents of the House of Representatives*, a note concerning which was published in a recent number of the REVIEW, is expected to appear in eight volumes from the government printing office before the first of December.

The publication by the government of Francis Newton Thorpe's *Charters, Constitutions and Organic Laws*, for the purchase of which congress appropriated $10,000 at the last session has been postponed and the matter is now in litigation, some question having arisen between the author and the joint committee on library concerning the manuscript.

Dr. L. Oppenheim, professor of international law in the London School of Economics and Political Science has been appointed to the Whewell chair of international law at Cambridge. Dr. Oppenheim formerly held professorships at Basel and Freiburg, and is the author of a treatise on international law in two volumes, published a year ago.

Prof. Joseph Redlich, of the law faculty of Vienna, has been appointed lecturer on government at Harvard for the second half of the present year. Dr. Redlich has achieved a wide reputation as an authority on English institutions by his treatise in two volumes on English local government, published in 1904, and still more by his elaborate work on the procedure of the house of commons, published two years ago and recently translated into English by A. E. Steinthal. He will give two courses, one dealing with continental, the other with English institutions.

President Benjamin Ide Wheeler, of the University of California, has been chosen by the Columbia faculty of political science as the Roosevelt professor at Berlin for the year 1909–1910, while Dr. Albrecht F. K. Penck, professor of geography and director of the geographical institute of Berlin, has been appointed Kaiser Wilhelm professor at Columbia for the year 1908–1909.

Miss Lucile Eaves, formerly instructor in history at Stanford University, and for the past seven years prominently connected with settlement and other philanthropic organizations in San Francisco, has just been called to the department of political science and sociology in the University of Nebraska as associate professor of practical sociology. The department mentioned was established two years ago; and already it has a class-enrollment of 340 students.

Prof. F. J. Goodnow has resumed his duties at Columbia after a year's absence, during which he made a tour around the world. He spent the winter in studying colonial administration in India and the Straits Settlements. In the spring he visited Australasia and later the Philippine Islands.

Prof. John A. Fairlie, of the University of Michigan, during the past half year has been in the service of the United States bureau of corporations preparing the report on inland waterways, the material for which

was gathered by the bureau last year. During Professor Fairlie's absence his courses were given by Prof. John B. Phillips, of the University of Colorado.

Dr. M. B. Phillips, of the University of Wisconsin, has accepted a call to the chair of history and political science in Tulane University. Mr. Phillips is a graduate of the University of Georgia, received his doctor's degree at Columbia, and is the author of a study entitled *Georgia and States Rights* and a monograph on *The History of Transportation in the Eastern Cotton Belt.*

Mr. Frederic C. Bramhall, who for the past year served as sociology librarian of the New York State Library has resigned to accept an instructorship in political science in the University of Chicago. Mr. Bramhall did both his graduate and undergraduate work in Chicago receiving his Ph.D. degree from there recently.

The chair of politics at Princeton, made vacant by the resignation of Professor Garfield, has been filled by the appointment of Mr. Henry J. Ford, well known as the author of *The Rise and Growth of American Politics.* Mr. Ford is an editorial writer by profession and for several years past has been a member of the staff of the *Baltimore News,* during which time he has held the position of lecturer on political science in Johns Hopkins University.

Although much improved Prof. John Bassett Moore will not resume his academic duties at Columbia until September, 1909. His courses in international law will continue to be given by Dr. George Winfield Scott. Meanwhile Professor Moore's work of editing the writings of James Buchanan is proceeding, the fourth volume having recently appeared.

At the International Exhibition to be held at Brussels in 1910, an international congress of administrative sciences will be convened. The object of the congress is announced to be "to give both students and administrators an opportunity of meeting and of examining in common some of the aspects of the serious problems that have been raised in our days by the growth of our urban populations and by the evolution of the modern idea of the State." The papers and discussion are later to be published in a series of volumes.

The second educational conference on state and local taxation was held in Toronto, Canada, October 6 to 9. A volume containing the papers read will shortly be published.

A new charter was adopted by Kansas City, Mo., at a special election held August 4. No distinctive change is made in the framework of government, but many functions are transferred from the council to appointive administrative boards, thus relieving the council of much routine work. Other important features of the charter are the provisions for the referendum, competitive examinations for parts of the municipal civil service, restrictions upon the municipal authorities in the granting of franchises, and enlargement of the power of the city to acquire and operate public utilities. The charter went into effect September 3, though the provisions as to civil service examinations do not become completely operative until 1910.

At the same election an alternative section providing for the "recall" of public officers was voted on separately. This section was approved by about two-thirds of those voting for the charter, but failed of adoption because it did not receive the majority required by the constitution for the ratification of a charter or amendment thereto—namely, four-sevenths of the votes cast in the charter election.

Upon the call of the Commercial Club of Webb City, Mo., a meeting of representatives of Missouri commercial clubs and city councils was held at Kansas City, September 22, for the purpose of considering the formation of a league of Missouri municipalities.

Prof. Bernard Moses, of the University of California, has lately published a book entitled *South America on the Eve of Emancipation* (New York, Putnam's, 1908), being a political history of the southern Spanish American colonies during the last half century of their dependence upon Spain. In this connection it may be noted that a new edition of Wm. L. Scrugg's *Colombian and Venezuelan Republics* has been published by Little, Brown and Company. Several of the chapters have been rewritten and a new chapter on the Panama Canal added.

Practical Citizenship, by Rev. Adolph Roeder, is the title of a volume recently published by the Isaac H. Blanchard Company, in which is embodied the result of the author's experience as president of the New Jersey Civic League and an officer in numerous other civic organizations.

The Ideas of the Republic is the title of a new book by Mr. James Schouler, being a study of the "origin and development of those ideas in civil government which have influenced the growth and progress of the United States as a world power among the nations" (Boston, Little, Brown and Company, 1908). The work is based on a series of lectures delivered at Johns Hopkins University and deals with such topics as the rights of human nature, racial types and equality, government by consent, the discipline of liberty, parties and party spirit, three departments of government, etc.

Prof. J. M. Callahan has published in the West Virginia University Studies in American History an interesting study of Russo-American relations during the civil war.

Hon. W. O. Hart of the New Orleans bar, has published in pamphlet form (*Fragments of Louisiana Jurisprudence*, Baton Rouge, Daily State Publishing Company, 1908, pp. 150) a series of lectures delivered by him in 1907 to the law class of the Lousiana State University.

The June, 1907, issue of the *John P. Branch Historical Papers*, published by the department of history of Randolph-Macon College, contains an interesting article by Professor Wm. E. Dodd on John Taylor, Prophet of Secession. In the same issue a number of the letters of Taylor are printed.

Recent volumes in the *Columbia University Studies in History, Economics and Public Law* are: *Ohio before 1850; A Study of the Early Influence of Pennsylvania and Southern Population in Ohio*, by Robert E. Chaddock; *Consanguineous Marriages in the American Population*, by George B. Louis Arner; *Factory Legislation in Maine*, by E. Stagg Whitin; *Adolphe Quetelet as Statistician*, by Frank H. Hawkins.

The American Branch of the Association for International Conciliation has recently issued the following leaflets: *The Possibilities of Intellectual Coöperation between North and South America*, by L. S. Rowe; *America and Japan*, by George Trumbull Ladd; *The Sanction of International Law*, by Elihu Root; *The United States and France*, by Barrett Wendell.

The generosity of a number of societies and individuals in providing a guaranty fund has made possible, for the next five years at least, an

annual bibliography of all books and articles of value relating to American history. The volume for 1908, compiled by Grace Gardner Griffin, has appeared (*Writings on American History*, 1906, The Macmillan Company, New York, 1908, pp. 186, price $2.50). The material is classified under various topical headings, one being politics, government and law, the sub-titles being diplomatic history and foreign relations, Monroe doctrine, constitutional history and discussion, politics, law and national government and administration, State and local government and administration.

A history and description of the organization and operation of the successful Amana Community has been published by the State Historical Society of Iowa. (*Amana, The Community of True Inspiration*, Iowa City, 1908, pp. 414). The author is Bertha M. H. Shambaugh. The treatment is an adequate one, the tone sympathetic and the English especially graceful. The paper, binding and typographical makeup of the volume conform to the very high standard of excellence set by all the publications of the Iowa Society.

International Documents: A Collection of International Conventions and Declarations of a Law-making Kind, edited with introduction and notes by E. A. Whittuck, has been published by Longmans, Green and Company. The collection contains the French and English texts of the declaration of Paris, 1856, the convention of Geneva, 1864, with the additional articles of 1868, the declaration of St. Petersburg, 1868, the Geneva convention of 1906, and the final acts and conventions of the Hague peace conferences of 1899 and 1907, together with the list of reservations. In an appendix are given the instructions given to the British plenipotentiaries, by this government, and reservations by Sir Edward Fry on the results of the conference.

The REVIEW welcomes the appearance of a new journal devoted to the political interests of the Philippine Islands. The *Encyclopedia Filipina*, published monthly in Manila, is under the editorial management of Felipe G. Calderon. The text is Spanish, and the subscription price $4 a year. In the May, 1908, issue is reprinted the presidential address of Mr. F. N. Judson, delivered last December before the American Political Science Association.

Another new journal of colonial interest is *The American Colonial Review and Intertropical Magazine*, the first issue of which is dated May,

1908. The journal is edited and published monthly by Louis V. de Abad, Washington and New York, the subscription being $3 a year. A Spanish edition is also issued—*Revista Colonial Americana y Magazine Intertropical*, the contents of which, however, are not exactly the same as of the English edition. The editor in his introductory statement says: "We firmly believe the time has arrived to bring to the public of both Americas in a more extensive manner than heretofore the questions of peculiar interest to these Latin and Anglo-Saxon peoples * * * With this object in view, we shall divide our articles into two groups, one embracing all matters of Latin-American international politics, and the other the American colonial policy. This second will comprise all topics touching the territories which are dependent upon the United States or those peculiarly within its sphere of influence."

Prof. Paul Laband of Strassburg has recenty contributed a brief study to the literature of German constitutional law and public finance under the title *Direkte Reichssteuern, ein Beitrag zum Staatsrecht des Deutschen Reiches* (Berlin: Liebmann, 1908, 70 pp.) in which he opposes direct taxes for the empire and attacks the system of state contributions (Matrikularbeiträge). The essay is marked by the author's usual charm of style and insight. Dr. Laband has recently celebrated the fiftieth anniversary of his doctorate. In commemoration of the event a group of distinguished scholars in his field have united in the preparation and publication of two volumes of *Festschriften* containing monographs on a variety of subjects in public law and political science (Tübingen: Mohr, 614 and 514 pp.) Among the better known contributors are Van Calker of Giessen, Fleiner of Tübingen, Jellinek of Heidelberg, Otto Mayer of Leipzig, Piloty of Würzburg, Preuss of Berlin, Rosenthal of Jena, Richard Schmidt of Freiburg i. B., Stoerk of Greifswald, Triepel of Tübingen and Zorn of Bonn.

Professor Laband was the recipient of various honors on the occasion of his academic jubilee, among which may be mentioned his elevation to the Prussian privy council, and the Prussian Order of the Red Eagle, etc.

The International Congress for Historical Sciences was held in the hall of the reichstag in Berlin from August 6 to 12, and was attended by nearly 1000 historians from all parts of the world. The proceedings were conducted in seven sections, one of which was devoted to the history of law and economics. Dr. Otto Gierke of Berlin was the leader of the latter section, and Sir Frederick Pollock and Prof. Heinrich Brunner were

its vice-presidents. Addresses of note before this section were made by Professor Altamira of the University of Oviedo on the actual state of the study of legal history in Spain, by Otto Fischer of Breslau, on the aims and methods of legal history teaching, by Professor Vinogradoff on national law and equity in English jurisprudence of the sixteenth century, and by Sir Frederick Pollock on government by committees in England.

The Story of British Diplomacy by T. H. S. Escott (London: 1908, pp. 420) is a sketch in fifteen chapters of the makers and movements of British diplomacy, mainly in the eighteenth and nineteenth centuries. There are some good sketches of diplomats like Canning and Palmerston, but the attempt to cover so large a field in so small a volume made it necessary to treat too briefly many subjects that deserve more extended consideration.

Recent political tendencies in England have called out a number of books, brochures and pamphlets on socialism, most of which are devoted to combating what is considered a drift toward state socialism by the present government. One of these, entitled *Political Socialism in England*, is a collection of papers by Lord Balfour of Burleigh, Lord Hugh Cecil, Percy Wyndham and others, and in the main is directed against the old age pension scheme (London, P. S. King). Another, entitled *English Socialism of Today*, by the Rt. Hon. H. O. Arnold-Forster, M. P (New York: Dutton, 1908, pp. 226), is a popular examination of the demands of the English socialists, and an exposition of their fallacies. He quotes from the socialist programmes to show that they teach the doctrine that class hatred and class war are inevitable and that one of their methods of action is to stir up conflict among the upper and lower classes. Under the caption What is Socialism Mr. Forster distinguishes between the socialism of the philosophers, the socialism of the active propagandists and the socialism of every day life. The latter he contends means nothing more than the actual expropriation of private property. On the whole he affirms that the actual teaching of the socialists are in many respects dangerous and contrary to public policy, and that the time has come when a systematic war should be waged against it.

Vital American Problems, by Harry Earl Montgomery (New York: Putnams, 1908, 384 pp.), is the title of a book which attempts to state the real character of the "trust," "labor" and "negro" problems and

which offers a solution for each. The trust he asserts is solely the result of the evolution of industrial progress, and is not in any sense an "excrescence on the commercial and industrial body politic." The solution lies in federal incorporation, the assessment of a tax of one-tenth of one per cent upon capital stock, a stricter personal liability of stockholders and directors, more definite reports to the government and greater responsibility, etc. The solution of the labor problem, he asserts, would be facilitated by requiring all corporations employing laborers to employ only by means of a written contract, no contract to be binding unless signed by the parties thereto. The said contract should state clearly the terms of service, the kind of service to be rendered and the wages to be paid, and its strict performance should be compelled by the courts. Where this plan is insufficient the solution may be reached through the more drastic means of compulsory arbitration. Nearly one-half the book is devoted to the negro problem, the solution of which, we are told, must come through education and religious influence.

Prof. Hutton Webster, of the University of Nebraska, is the author of a book entitled *Primitive Secret Societies: A Study in Early Politics and Religion* (New York: Macmillan, 1908, pp. 227) originally prepared as a dissertation for the doctorate in political science at Harvard. He discusses at length the primitive institution known as the "Men's House," the separation of the sexes, the puberty institution, secret rites, the power of the elders, the development, function and decline of tribal societies, clan ceremonies, etc. The study bears evidence of wide and careful research as well as industry and skill in the arrangement of material.

The subject for the Baldwin prize essay for the year 1908–1909 is A Study of the Practical Operations of Government in Some Large American City. Competitors will be allowed to select any city of the United States having a population of not less than 300,000. The essays must not exceed 10,000 words in length and must be delivered before March 15 next to Clinton Rogers Woodruff, secretary of the National Municipal League, North American Building, Philadelphia. For additional details concerning the conditions of the competition inquiries may be addressed to Prof. W. B. Munro, Harvard University, Cambridge, Mass. In 1906, the first year in which the prize was offered, twelve essays were submitted, in 1907, nine were submitted and in 1908, eighteen were submitted.

The joint meetings of the National Municipal League and the American Civic Association will be held this year at Pittsburg, November 17 to 20. One session of the League will be devoted to public utility commissions, one to the conservation of national resources, one to charter and electoral reforms, one to instruction in municipal government and one to "militant citizenship." Bill-boards, the smoke nuisance, the fight against flies and mosquitoes, local improvement and school extension will receive attention at the hands of the Civic Association. There will be two joint sessions, one devoted to municipal sanitation, the other to the Pittsburg survey now being carried on under the auspices of the Sage foundation. The annual address by President Bonaparte of the Municipal League will be delivered Wednesday evening. Hon. George W. Guthrie, Mayor of Pittsburg, for years an active member of the League, is chairman of the committee on arrangements.

A catalogue of the Chicago Municipal Library has been compiled under the direction of Frederick Rex, assistant city statistician, and published by the bureau of statistics and Municipal Library (Chicago, 1908, 149 pp.). Most persons who have occasion to consult this catalogue will be astonished at the extent of material relating to municipal government that has been collected by the bureau of statistics during the short period of its existence, the total number of books, pamphlets, magazines and typewritten folios listed, amounting to 15,000.

A *Bibliography of Municipal Betterment* has been published by the Kansas City Public Library. There are respectable lists of books on baths, charities, child labor, cities, citizenship, elections, food and food adulteration, housing problem, and so on through the alphabet. There is also a 47 page list of periodical articles, under appropriate headings.

The 1907 volume of the *Proceedings of the National Conference for Good City Government and the Thirteenth Annual Meeting of the National Municipal League* fully measures up to the high standard set by the editor, Clinton Rogers Woodruff, in the previous volumes. The Providence meeting was in many respects the most notable meeting the League has held. There were in all seventeen sessions and eighty-one speakers. The present volume contains all the papers prepared for the meeting of the League and a number presented at the joint session with the American Civic Association, on municipal health and sanitation. Worthy of note are the four papers on the commission form of municipal govern-

ment, easily the best of which is that by Prof. W. B. Munro of Harvard University, on the Galveston plan.

A valuable study of the cost of municipal government in Massachusetts has been made by the bureau of labor statistics of that State, the results of which are published in a volume of 300 pages, being the first annual report on the comparative financial statistics of cities and towns. The investigation was undertaken in pursuance of an act of the general court passed in 1906, which requires the accounting officer in each city and town in the commonwealth to furnish annually to the bureau of labor and statistics a summarized statement of all revenues and expenditures for the preceding fiscal year. The report shows the amount expended for the various municipal services in each city from which some interesting comparisons are made. The investigation reveals some conditions which should receive the attention of the legislature, such, for example, as the lack of system in handling receipts and making disbursements, defects in methods of accounting, the administration of trust funds, etc. Altogether, the report is a creditable piece of investigation, and throws much light on some of the important questions of municipal finance.

New bibliographical lists published by the library of congress relate to political parties in the United States (28 pp.), the eight hour working day and the limitation of working days in general (24 pp.), the postals savings bank (23 pp.), and control of commerce.

New publications in the Johns Hopkins series are *British Committees, Commissions, and Councils of Trade and Plantations 1622–1675*, by Charles M. Andrews; *Neutral Rights and Obligations in the Anglo-Boer War*, by Robert Granville Campbell; *The Elizabethan Parish in its Ecclesiastical and Financial Aspects*, by Sedley L. Ware; *A Study of the Topography and Municipal History of Praeneste*, by R. V. D. Magoffin.

It is announced that Dodd, Mead and Company are to resume publication of their *International Year Book*, which suspended in 1902. As *Appleton's Annual Cyclopædia* was suspended about the same time, we have had no *Annuaire* comparable to the English *Annual Register* or the German *Geschichte Kalender*. Both year books were carefully prepared, and the resumption of one of them will be welcomed by students generally.

The Annotated Constitution of Michigan in two volumes (published by the Michigan State Library) is a useful reference work prepared for the use of the late constitutional convention of that State. Each article of the constitution is considered in turn and is then annotated in the usual way in a preliminary pamphlet. Then it is published in separate form with similar provisions in other State constitutions. Thus the topic municipal corporations is treated in a pamphlet of 120 pages, all the constitutional provisions of the several States relating to counties, townships, cities and villages being arranged in order.

Prof. A. B. Hart's *Manual of American History, Diplomacy and Government* (published by Harvard University, Cambridge, Mass., 1908, pp. 554) is an admirable and useful bibliographical contribution to the literature of American history and government, and should be invaluable to teachers of these subjects. It is, we are told, the rseult of his twenty-five years' experience as a teacher and is based on several previous publications, notably his outlines, suggestions for students, revised suggestions and handbook, all of which have proved helpful to teachers. The material for each, however, has been entirely worked over and rearranged, so that the present volume is substantially a new work. It is divided into five parts devoted successively to method and materials, lectures and readings, class-room papers, library reports and examinations. It provides an outline and guide for six different courses; four on the development of American diplomatic and political history, two on American government. There is also a list of more than 100 topics for class-room reports and more than 1000 subjects for library reports.

Two noteworthy bulletins of the University of Wisconsin recently published (Economics and Political Science Series) are *The Labor Contract from Individual to Collective Bargaining*, by Miss Margaret Schaffner, and *The Labor History of the Cripple Creek District*, by Benjamin M. Rastall.

Mr. Clifford S. Walton, of the District of Columbia bar, is the compiler and editor of a commercial and maritime code of Latin-America in five volumes. The work is published in Spanish under the title *Leyes Commerciales y Marítimas de la América Latina*, by the department of state of the United States for the use of diplomatic and consular officers (Washington: Government Printing office, 1907). The work is a careful compilation from official sources and should prove useful to students of maritime law.

Another contribution has been made to the literature dealing with the international law and diplomacy of the Russo-Japanese war. The author of this latest work is Sakuye Takahashi, professor of international law in the imperial university of Tokyo and vice-president of the International Law Association of London. The work is entitled *International Law Applied to the Russo-Japanese War with the Decisions of the Japanese Prize Courts* (xviii, pp. 805, London: Stevens and Sons, 1908). Mr. Takahashi during the war was a member of a council appointed by the Japanese government to assist in the direction of the war and gave his advice on a number of questions of international law which arose during the conflict. He had also served as a legal adviser to the commander of the fleet during the war with China, and later prepared a volume of *Cases on International Law during the Chino-Japanese War.*

The present work is divided into five parts dealing successively with the commencement of hostilities, the laws and customs of war on land, the laws of maritime war, neutrality and prize cases decided by the Japanese prize courts, of which there were two inferior and one superior tribunal established. The author shows conclusively, as Hershey and Smith and Sibley had already shown in their treatises, that Japan was guilty of no violation of international usage in beginning hostilities without a preliminary declaration, and he contends that Japan in all other respects, notably in the treatment of prisoners, constantly observed the well established rules of war. The Russian charge that Japanese troops were guilty of firing on Red Cross trains he flatly denies. All the various questions raised, notably those relating to contraband, trade with the enemy, rights of refugee vessels in neutral ports, etc., are discussed intelligently and, on the whole, impartially. In part five the decisions of the Japanese prize courts are reproduced and explained. There is an appendix containing the texts of various important documents, such as the instructions for the government of the forces, prize regulations, the treaty of peace, etc.

An interesting contribution to the literature of international law and diplomacy has been made by a Belgian advocate, Gaston de Laval, under the title *De la protection diplomatique des nationaux à l'étranger.* The author calls attention to the increasing rôle which diplomatic intervention in the interest of nationals has come to play in the relation of states, as a result of intercourse and residence. He discusses the rights of nationals in foreign countries, the conditions under which they are entitled to the protection of the governments to which their allegiance

is due, examines the objections which are often raised to the principle of diplomatic intervention for the protection of individuals, and reviews in detail the cases of intervention arising from expulsion, impressment into military service, etc. M. de Laval's treatise contains much information that will be useful to diplomatic agents upon whom calls are so often made for the employment of their good offices or authority for protection against the action of the local authorities (Brussels: Bruylant, 1907, 188 pp.).

Coleman Phillipson, an English barrister, has published a study entitled *Two Studies in International Law* (London: Stevens and Haynes, 1908, pp. xviii + 136), one dealing with the influence of international arbitration on the development of international law; the second, with the rights of neutrals and belligerents in regard to submarine cables, wireless telegraphy and the interception of messages in time of war. In the first essay the author reviews in detail the various arbitration projects from ancient times to the present day, discusses the modern conception of arbitral procedure and reviews the principal cases in which arbitration was resorted to in the nineteenth century. The second essay dealing with the rights of neutrals and of belligerents with regard to telegraphic communication in time of war is a clear, concise and accurate discussion, both from the historical and legal point of view.

Il rapporto di neutralita by Guiseppe Ottolenghi (Turin: Unione tipografico-editrice terinese, 1907, pp. 518) is an excellent study of the legal nature of neutrality. The author rejects the view of most writers that neutrality is a condition of fact. He examines the different theories concerning the basis of the neutral relation, none of which, he maintains, affords a satisfactory solution of the question. Then follows a discussion of his own theory based on the fact that neutrality is a voluntary act and that the will of states is an essential coefficient in its determination. Finally the author discusses in detail the fundamental duties of belligerent states toward neutrals, the obligations of neutrals, the legal status of neutral subjects, contraband of war, etc.

Guerre maritime et Neutralité is the title of an official publication of the Russian government containing a collection of treaty provisions and legislative acts of various countries relating to the rules of maritime warfare and the rights and duties of neutrals. It was intended to serve as a rough code of maritime law for the use of the second Hague conference.

The work is divided into three parts: the first, containing the texts of various acts, such as the declaration of Paris of 1856; the second, the conventional agreements of different states; and third, legislative provisions and executive orders. The collection was prepared by André Mandelstam, dragoman of the Russian embassy at Constantinople and Baron Noldé of the Russian foreign office and professor of international law at St. Petersburg (St. Petersburg: Kirschbaum, 1907, pp. 341).

An Italian writer, Arrigo Cavaglieri, professor in the Institute of Social Sciences at Florence, is the author of a little book entitled *L'elemento consuetudinario nel diritto internazionale privato* (Padua: Drucker, 1908, 130 pp.) being a study of the element of custom in private international law. He attempts to show that in private international law as in public international law custom plays a great rôle and that it is the source of many of the rules which govern where there is a conflict of legal systems. This study is in a way a complement to the author's work on the *Element of Custom in Public International Law*, published a year or two ago.

Louis Pérez Verdia, a deputy in the Mexican congress and professor of international law in the School of Jurisprudence of Guadalajara, has published an elementary treatise on private international law under the title *Tratado elemental de derecho internacional privado* (Guadalajara, 1908, pp. 359). The first three chapters deal with definitions, principles and theories. The author then takes up the subjects of personality, domicile, capacity, absence, marriage, separation, divorce, paternity, guardianship, etc. The later chapters deal with questions of procedure, competence, execution of judgments, extradition and effect of sentences.

A flood of books and brochures dealing with the work of the second Hague peace conference is now offered to the public. Perhaps the most important of these contributions is *La Seconde Conférence de la Paix*, by Ernest Lémenon, an advocate before the court of appeal at Paris (Paris; Pichon et Durand-Auzias, 1908, pp. 800). The introductory chapters give a résumé of the work of the first peace conference at the Hague, the origin of the second conference including the negotiations leading up to it and a review of the preliminaries of the second conference. Then follow a series of chapters dealing in succession and in detail with the work of each of the commissions, a "title" being devoted to each commission. The work is an analysis not only of the several

acts of the conference, but of the numerous deliberations; the various propositions, counter-propositions and amendments relative to each subject considered—a feature which is necessary to the proper appreciation of the work of the conference. There is a final chapter in which the author sums up his conclusions and gives an appreciation of the work of the conference as a whole. The distinguished senator of the French republic, Léon Bourgeois, who was at the head of the French delegation to the second conference contributes a preface. The work of M. Lémonon is marked by good judgment, is free from partiality and is in every way a valuable study.

A German work far less comprehensive is *Die Zweite Haager Konferenz: Ihre Arbeiten, ihre Ergebnisse und ihre Bedeutung*, by H. Fried (Elischer: Leipzig, 1908, pp. 218). The author divides his work into three parts, the first of which deals with the history of the conference, the second with its work, and the third, with an estimate of its results. He maintains that the conference was greatly handicapped by the fiction of the equality of the states, which gave Montenegro the same power in determining the work of the conference as was enjoyed by the United States and other great powers. He is particularly severe in his denunciation of the "fetish" of equality, and also attacks the rule of unanimity which prevailed in the deliberations of the conference. He places on Germany in general and on its first delegate, Baron Marschall, in particular, the responsibility for defeating the project for obligatory arbitration.

L'œuvre de la deuxième conférence de la paix: Exposé juridique et texte des conventions by Antoine Ernst (Paris: and Brussels, 1908, pp. 175) is an instructive commentary on the several conventions adopted by the conference. The author was the secretary of one of the Belgian delegates.

La Belgique et l'arbitrage obligatoire à la deuxième conférence de la paix (Brussels: Dewitt, 1908, pp. 44) is an anonymous brochure devoted to a justification of the action of the Belgian delegates and other powers who voted against the Anglo-American project for obligatory arbitration. The author supports without reserve the objections which Baron Marschall urged against obligatory arbitration and contends that Belgium favors the principle as far as it concerns controversies which do not affect vital nterests, independence or the honor of states.

An English work, entitled *International Problems and the Hague Conference*, by Prof. T. J. Lawrence, is announced, and an American work by Prof. James B. Scott is expected to appear from the Johns Hopkins Press at an early date.

Two monographs of interest to students of international law are *Exterritoriality: the Law Relative to Consular Jurisdiction and to Residence in Oriental Countries*, by Sir Francis Piggott (London: Butterworth, 1908, pp. 326) and *The Congo State, Its Origin, Rights and Duties*, by A. Castelein (London: Nutt, 1908, pp. 274).

Arbitration in Latin America, by Gonzalo de Queseda, Cuban minister to the United States and delegate to the second peace conference at the Hague, is the title of a little book which reviews the history of the policy of the Latin-American states with regard to the arbitration of international disputes. The author shows that from the independence of these states to the third Pan-American conference at Rio Janeiro in 1906, arbitration has played a great rôle in South American policy. He reviews in succession the acts and declarations of the various congresses and conferences so far as they relate to arbitration, and in a final chapter gives a history of the arbitration movement, citing constitutional and treaty provisions relating to arbitration and the cases which have arisen from time to time and the manner of their settlement (Rotterdam: Wijt and Zonen, 1907, pp. 136).

Henrique Lisboa, a Brazilian diplomat, has lately published a book entitled *Les fonctions diplomatiques en temps de paix* (Santiago, 1908, pp. 275) in which he dwells upon the increasing rôle which diplomacy plays in modern life on account of the new means of communication, the development of commerce, industry, navigation, science and art, all of which have created new subjects for diplomacy. He shows how the permanent embassy has become a necessity, and insists that diplomacy should be made a professional career. The author offers his work to beginners as a guide and to diplomats in general as a manual to be consulted for rules of diplomatic usage.

Das Staatsbürgerrecht im internationalen Verkehr, by Prof. J. Sieber (Bern: Stämpfli et Cie, 1907), is another contribution in two volumes to the already large and increasing literature of citizenship and international law. The first volume of the present work is a systematic study of the law relating to the many questions that are constantly being raised in

international intercourse. The doctrines of the *jus sanguinis* and the *jus soli*, including the theory of perpetual allegiance, are considered at length. The second volume contains, mostly in translated form, the law of the various countries relating to citizenship. In this connection mention may be made of Baumhägger's *Die rechtliche Natur der Naturalization nach deutschen Reichsstaatsrecht* (Bonn: Georgi, 1906), a study of the acquisition of citizenship by naturalization according to German imperial law, and the legal nature of the act.

Das Staatshaupt in den Republiken, by Carl Walther (Breslau: Marcus, 1907), is the first systematic study of the executive of republican states. The author describes the various forms of the presidency prevailing in republics and examines the nature of the office as compared with hereditary executives.

Dr. Heinrich Geffcken is the author of a brochure entitled *Das Gesammtinteresse als Grundlage des Staats- und Völkerrechts* (pp. 61, Leipzig: A. Deichert, 1908) in which he attempts to account for the establishment of social relations between men on the theory that they prefer the general interest to their interest as individuals. He considers the state as an original juridical person which cannot be created by a superior or external will, and whose end is to safeguard the interests of the persons who compose it. He discusses the sovereignty of the state, which he says is a sovereignty of law—a law which is born with the state and the realization of which is the highest end of the state. He dwells particularly on two aspects of the state, namely, its exclusive right over all persons in its territory, and its absolute equality with other states in all international relations. Finally, he examines the various forms of states, sovereign states, federal states, confederations, etc.

Le Condominium franco-anglais des Nouvelles-Hebrides, by N. Politis (Paris: Pedone, 1908, pp. 151), is a study of the origin and history of the Anglo-French administration of the New Hebrides Islands. The author considers in turn the declaration of 1878 and the convention of the same year, the "accord" of 1904 and the convention of 1906. The constitutional status of the territory, the legal condition of the inhabitants and the governmental organization are among the subjects discussed.

International Arbitration as a Substitute for War Between Nations, by Russell Lerois Jones (London: Simpkin, 1908, pp. 269), is a historical monograph on arbitration which received a Carnegie prize in 1907.

Paul Fauchille, director of the *Revue générale de droit international publique*, and Nicolas Politis, professor of international law at Poitiers, are the joint authors of a little book entitled *Manuel de la Croix-Rouge, à l'usage des militaires de terre et de mer et des sociétés de secours aux blessés*, being mainly an exposition of the Red Cross conventions of 1899, 1900 and 1907 and a commentary on the law applicable to war on land and on the sea. There is a preface by Professor Rénault and an appendix containing the texts of the Red Cross conventions (Paris: 1908, pp. 195).

Gaston Jéze, professor of administrative law at the University of Lille, who has recently published a French translation of Goodnow's *Principles of Administrative Law*, has now translated into French Dicey's *Law and Public Opinion in England in the Nineteenth Century*. Giard et Brière are the publishers.

La loi: Essai sur la théorie de l'autorité dans la democratie, by Maxime Leroy, is the title of a new contribution to theoretical jurisprudence (Paris: Giard et Brière,1908, pp. 353), in which the author discusses at length such topics as the history of the conception of law, the "order" of law, the "organization" of law, the distinction between law and *règlement*, judicial interpretation, social solidarity as a principle of law, the doctrinal theory of law, the reign of law in a democracy, etc.

L'Administration de la France: les fonctionaires de gouvernement: le ministère de la justice (Paris: Perrin, 1908, pp. 435) is the title of an excellent work on French administration by Henri Chardon. The author has been a member of the council of state for more than twenty years and possesses a rare degree of familiarity with the details of the French administrative service. His work is an exposition of the governmental organization of France and of its administrative activities as they actually are. The ordinance powers of the prefects, the mayors and the prefectural councils are discussed in detail. The most valuable part of the book is that which deals with the work of the council of state, for it is with this branch of the administrative service that the author is most familiar. Two years ago he published a volume dealing with the public works of France.

La vie politique dans les deux mondes (1906–1907) is the title of a new annuaire or year book established in Paris and published under the editorship of A. Viallate, director of the *Annales des Sciences Politiques*, assisted by a number of professorial colleagues in the École des Sciences

Politiques. It contains a review of political events occurring in the entire world topically arranged. It differs from the French *Annuaire*, the German *Geschichte Kalender* and the English *Annual Register* in that its scope includes all civilized countries. This first number contains 600 pages, of which 50 pages are devoted to France, 60 to the British Empire, 50 to Germany, 50 to the United States and 40 to the Orient. In addition to the chroniques of particular countries there are three chapters on international politics, international acts and economic life. There is also a preface by Anatole Leroy-Beaulieu, an article on the second Hague conference by Professor Renault and an excellent alphabetical index. The publisher is Félix Alcan of Paris.

Appunti di diritto Costituzionale, by Gaetano Mosca (Milan, 1908, pp. 156), is the title of a little treatise on the Italian constitution. After a brief review of the genesis of modern constitutions the author takes up the *statuto* granted by Charles Albert in 1848 to his Sardinian subjects and accepted by the other Italian states from 1859 to 1870. Then follow discussions of the king, the cabinet, the parliament, the judiciary, individual rights and the relations of church and state.

Le compromis de 1868 entre la Hongrie et la Croatie et celui de 1867 entre l'Autriche et la Hongrie, by G. Horn (Paris: Libraire générale de droit et de jurisprudence, 1907, pp. 256) is a critical and historical study of the constitutional relations between Hungary and Croatia and between Austria and Hungary, by a Paris advocate, editor and doctor of law. In the first part of his work M. Horn reviews the history leading up to the compromise of 1868 between Hungary and Croatia and attempts to show by analysis the fact that Croatia is a free country with a political and legal individuality of its own, having never been conquered by Hungary, Austria or Germany. It is in fact a plea for Croatian independence. In part two he gives a translation of the compromise pact of 1868 with a commentary on each article. He reproduces also the text of the Austro-Hungarian compromise of 1867 under each article of the Hungarian-Croatian agreement which refers to it.

J. C. Bluntschli und seine Bedeutung für die Moderne Rechtswissenschaft is the subject of a memorial address recently delivered at Zürich by Prof. F. R. Meili in commemoration of the one-hundredth anniversary of the birth of Bluntschli. (The address is published by Fussli, Zürich, 1908, pp. 39).

Prof. Otto Mayer of Leipzig is the author of a study entitled *Die juristische Personen und ihre Verwertbarkeit im öffentlichen Recht* (Tübingen: Mohr, 1908, pp. 94) being his contribution to the Laband "Festgabe" series. It is a clear and admirable exposition of the doctrine of the juristic personality and may be compared with the excellent French work by Michoud published two years ago under the title *Théorie de la personalité morale*, a work which Mayer does not seen to have consulted.

Dr. Félix Salomon, professor of history in the University of Leipzig, recently the author of a notable biography of *Wilhelm Pitt der Jüngere*, has lately prepared under the title *Die deutschen Parteiprogramme* a systematic collection of German party programmes or platforms from the beginning of the constitutional era in Prussia to the year 1900. The collection is divided into two parts; part one contains the programmes from 1844 to 1871; part two, those from 1871 to 1900 (Leipzig: Teubner, 1907). A somewhat similar work, though more than a compilation, is Chr. Grotewold's *Die Parteien des deutschen Reichstages* (Leipzig: Wigand, 1908, pp. 339), being a review of the programmes and tendencies of the various parties in the reichstag.

A new edition (the fifth since 1900) of Professor Berthélemy's *Traité élémentaire de droit administratif* has been published (Paris: Rousseau, 1908, pp. xi + 982). The new edition possesses valuable bibliographical notes and numerous references.

Römisches Recht und Pandakten-Recht in Forschung und Unterricht (Berlin: Vahlen, 1907, pp. 80) is the title of a brochure by Prof. Fritz Litten of Halle, in which he attempts to describe the place, which, in his opinion, Roman law should occupy in science and in legal instruction, particularly in Germany where the study of the new civil code threatens to displace Roman law in the universities. Professor Litten with Leonhard of Breslau and a few others see cause for alarm and pleads for the retention of Roman law in the German system of legal education. Still another contribution to the discussion has been made by Prof. Leopold Wenger under the title *Die Stellung des öffentlichen römischen Rechts im Universitäts Unterricht* (Wien: Manz, 1907, pp. 40).

A new and enlarged edition of Windscheid's *Lehrbuch des Pandektenrechts* in three volumes has been prepared by Theodor Kipp, professor in the University of Berlin (Frankfort: Rutten und Leoning). The

new edition is augmented by 250 pages of new matter, and is enriched by an excellent bibliography covering the legal literature of recent years.

A new edition (the second) of Brunner's *Deutsche Rechtsgeschichte* has recently appeared from the press of Duncker and Humblot. The new edition contains 200 pages of new matter, an elaborate index of 40 pages and a bibliography brought down to date.

The second volume of the new *Zeitschrift für Völkerrecht und Bundesstaatrecht* founded two years ago by Dr. Josef Kohler has appeared. It contains the usual number of signed articles, reviews, documentary texts and *chroniks*. Among the more important articles may be mentioned The International Status of a Tunnel under the English Channel, by Professor Oppenheim of London; Critical Jurisprudence and Juristic Persons, by Walter Pollock of Berlin; International Law as a Title of Private Law, by Dr. Josef Kohler; Contraband of War in Theory and Practice,by Dr. Paul Posener of Berlin; Studies in the History of International Law in the Far East, by Herbert Mueller of Berlin; Modern Non-political International Unions and Congresses and International Law, by William Kaufmann; and The Proper Field of International Law in Theory and Practice, by Prof. Otfried Nippold.

The Trade and Administration of the Chinese Empire, by Hosea Ballon Morse, a graduate of Harvard, member of the Royal Asiatic Society and commissioner of customs in China (New York: Longmans, 1908, pp. 451) is a concise, clean cut and reliable description of the economic and political state of the Chinese empire, based on the author's observations and experiences of thirty years residence in China. The government, the financial system, extraterritoriality, foreign commerce, internal trade, the opium traffic, the customs service and the postal system are all discussed in detail and in an interesting manner. The chapters on the imperial customs and postal system, built up by the administrative genius of Sir Robert Hart are entitled to special mention.

Mr. Frederick Stimson, whose Lowell lectures, published under the title *The American Constitution* were reviewed in the last number of the REVIEW, has lately published a more comprehensive work entitled *The Law of the Federal and State Constitutions of the United States* (Boston: The Boston Book Company, 1908, pp. xxii + 386) originally prepared for use in his classes at Harvard University. It is divided into three books, the first

of which deals with the origin and growth of the American Constitution, the second with the principles of civil liberty as expressed in English statutes and American constitutions, while the third is in the main an analysis of the State constitutions. The second and third books are merely compilations, only the first being in the nature of a commentary. Mr. Stimson laments that historians and writers on constitutional law have over-emphasized the political provisions of the Constitution—the frame of government—to the neglect of that which is most important, namely the liberties of the people. He therefore turns his attention more directly to the "broader principles of individual rights" to which he devotes some ten chapters dealing with fundamental rights, such as the "right to law" (i.e., the right of the individual to resort to the courts in case of any dispute with a private person or with the government), the right of personal liberty, the right to labor and trade, the right to property and various other "cardinal rights of less importance" including the right to take part in the government. In a chapter on chancery and the injunction order he discusses the history of the use of the injunction with particular reference to its employment in labor disputes, and concludes that its use in such cases is objectionable, not only for the historical reason that it is in derogation of the common law, but also "because it tends to make the courts no longer judicial, but in effect part of the executive branch of the government." In his chapter on the right to labor and to trade he renews the claim, discussed more at length in his volume on *The American Constitution*, that the bulk of our anti-trust legislation, particularly that of the States, is unnecessary since the common law remedies are fully adequate. He also renews his attack upon the recent federal railway legislation, but happily refrains from the rather intemperate criticism which characterizes his previous work. In his discussion of governmental organization he eulogizes the principle of the separation of powers as the "most important of all our governmental principles, analyzes the arguments for and against the initiative and referendum, and criticises the increasing verboseness of our newer constitutions. Book II contains an elaborate classification of English and American constitutional principles under such heads as jury trial, habeas corpus, elections, freedom of speech, etc; also a historical digest of important English social legislation, from the conquest to the present time. The most useful part of Mr. Stimson's work is undoubtedly Book III, which takes up more than one-half of the entire volume. It is an elaborate comparative digest of the State constitutions in 996 sections. The digest seems to be carefully and thoroughly done and the arrange-

ment is logical and scientific. As a whole the work adds nothing to the reputation which Mr. Stimson's *American Statute Law* gave him. It is not a scientific treatise or commentary which will take an important place in the literature of constitutional law, but it will prove useful to students and teachers.

Professors Moreau and Delpech, of the University of Aix-Marseille, have rendered a valuable service to students of comparative government by their recently published two volume work entitled *Les Réglements des Assemblées legislatives.* An exhaustive compilation has been made of the rules governing the action of each of the houses of legislature of the following countries; Germany, Prussia, England, Austria-Hungary, Belgium, Spain, the United States, Greece, Italy, Norway, Holland, Sweden and Switzerland, including also the cantons of that country. Such constitutional or statutory laws of the various states as affect the legislative bodies of the respective states are given before the rules of the legislative bodies themselves. In addition to excellent tables of contents in each book, there appears at the end of the second volume a very complete general alphabetical index of 75 pages, which renders the work particularly serviceable. (*Les Réglements des Assemblées legislatives.* By Felix Moreau and Joseph Delpech. Paris: V. Giard et E. Brière. Price, 30 francs.)

BOOK REVIEWS

The Coming Struggle in Eastern Asia. By B. L. Putnam Weale. (London: Macmillan and Company, Ltd. 1908. Pp. xiv + 640.)

B. L. Putnam Weale is the pseudonym of Mr. Bertram Lenox Simpson. He is said to be an Englishman who formerly held a position in the Chinese imperial customs service. The preface to his first work on the Eastern question implies that he is no longer in government service—a fact which enables him to write with candor—and states that he has "known his Far East since his first days." This work, published in 1904, is entitled *Manchu and Muscovite.* Then followed in order the treatises, *The Re-shaping of the Far East* (1905), *The Truce in the East and its Aftermath* (1907), and finally the work now under review. In addition he published in 1907 a book dealing with the Boxer uprising with the title, *Indiscreet Letters from Peking.* This is a notable literary output upon a subject requiring much labor and close investigation, and of an elusive and changing nature.

In the preface to the present volume, Mr. Simpson admits that his second treatise was necessary in order to correct false prophecies in the first; that his third treatise records developments entirely different from what had been anticipated; and that now he has undertaken a "re-valuation of the old forces in the Far Eastern situation." Near the end of the volume he frankly states that he has attempted "to measure in a few hundred pages that which cannot properly be measured at all." This series illustrates the truth that political prophecy at its best is unreliable. The attempt, however, when preceded by an earnest effort to know the facts is always worth while. Mr. Simpson has followed this method. He presents the facts which he has collected from personal observation, from official documents, from newspapers in the Far East, and from conversations with actual participants in the moving events. The reader may therefore draw his own conclusions if he prefers to disregard the prophecies of the author.

The book consists of three parts. The first describes conditions in the Russian domain and sphere of influence east of Lake Baikal. The second is a study of Japan. The third, after indicating the internal forces that

are at work for the regeneration of China, summarizes the struggle round China, in which Japan and Russia are still engaged, and in which other great powers are necessarily involved.

The method of presentation in Part I is to describe an actual railway journey from Vladivostok to Khabarovsk and return; then west over the Chinese Eastern Railway to Lake Baikal; back to Harbin, and then south into the Japanese sphere of influence and to Port Arthur. Upon the description of this jounrey is hung a remarkable series of observations on the past, present and future of Asiatic Russia. Merely as a tale of travel it is thoroughly interesting reading. The most persistent impression is that made by the immense potential strength of this great country, and the enormous internal development now in progress following the recent military check to territorial expansion. If Mr. Simpson is correct, a prosecution of the Russo-Japanese war to the bitter end would have brought victory to Russia simply from force of numbers and preponderance of material resources. Russia even now is infinitely better prepared for land warfare than she has even been before, and the progress is continuous.

Part II has for its text, Japan, as the potential center of disturbance in the Far East. Her government, finances, industry, commerce and shipping, and her army and navy are separately considered. The criticism is supported by much statistical data, and first-hand information concerning the administration and methods of government. In contrast to Asiatic Russia, a tendency to overdevelopment is observed. At the same time a desire for territorial expansion causes her to neglect vital elements at home while exploiting her newly acquired territory. The "open door" in Japanese controlled territory is said to be a myth. An extraordinarily large budget with no prospect of its decrease for many years indicates an unsafe speculative tendency. Russia being no longer a sea power, the development of the Japanese navy beyond the apparent need suggests some motive that cannot yet be guessed.

Part III attempts an estimate of the possible position of affairs in China by the year 1915. The reforms in the Peking government, and in the provinces are described. The fact that since the Boxer trouble China has raised an army sufficient to police her territory unaided is evidence of a new nationalism the slogan of which is "China for the Chinese." As between Russia and Japan, the Chinese favor the Russians.

Thus many of the elements of the "coming struggle" are apparent. Russia for the present is content to strengthen the forces that she retains.

Japan is ever widening her spheres of influence. China is awakening to the danger of this encroachment. She may shortly make the demand that both Russia and Japan relinquish their control in southern Manchuria. The Japanese lease of Port Arthur expires in 1923. This alone may be sufficient to precipitate a conflict. Recurring again to the expansion policy of Japan it is asserted that her natural course of empire lies south. This is for the reasons that rice is her most essential food, that she cannot produce a sufficient quantity at home, and that the warmer southern Chinese coasts, and the southern islands are best suited for this cultivation. Expansion in this direction involves the United States in the Philippines and France in Indo China. During the life of the Anglo-Japanese alliance, complications with these powers may involve England. This alliance is thought to have been very doubtful diplomacy. For the United States, the Philippines are an element of weakness rather than of strength. They have made her a party in the Eastern question. Japan has now the naval mastery of the Pacific. The United States is the logical contestant for this mastery. In this situation, the importance of the Panama canal becomes evident. In addition the requisites for the United States are a strong navy, fortified coaling stations, and a strong Philippine army.

The final word of the book is that "a corrective is absolutely necessary in Eastern Asia in order to postpone, if not to prevent, the inevitable struggle." No conclusion is reached, however, the present time being designated as "an ominous pause, a calm before the storm."

FREDERICK CHARLES HICKS.

The Awakening of China. By W. A. P. MARTIN, D.D., LL.D. (New York: Doubleday, Page and Company. 1907. Pp. x + 328.)

This volume in the Geographical Library, a series descriptive of recent geographical or political advance by persons conspicuously engaged in furthering it, is evidently designed for popular rather than scholarly consumption and is admirably well written to fulfill its purpose. Crises in the contact of western nations with China have induced so much ephemeral, hastily or ill-conceived literature from globe-trotters, war correspondents, diplomatic, consular and commercial agents or others of brief residence and limited experience in the East, that it is not only necessary but a relief to turn to the safe pilotage of such men as S. Wells Williams, Boulger, A. H. Smith, and Martin who have seen enough of

the land and the people of China to know them, and who have played no small part in their betterment. Dr. Martin's residence in China through more than half a century of her most important history, i. e. since 1850, and his services as missionary, educator, author, diplomat and adviser to high political authorities, not to mention his admission into the "highest, but one, of the nine grades of the mandarinate," and his participation in many events of historical importance entitle his opinions to the serious consideration of all interested in the progress of civilization and reform in China.

Though in the first half of the book the author carries us on a kind of "personally conducted" tour through the eighteen provinces of China, in half of which he has lived, and the four outlying territories (Mongolia, Manchuria, Turkestan and Thibet), and through the annals of Chinese history to the eighteenth century, vivifying their dry details, his real interest and contribution is in the second half, the transformation of China, to which the other portions are introductory. His aim is to explain and to aid with his pen the great social revolution which he conceives to be taking place in this "living-in-death" empire; greater than that promised in Russia because China's is not merely political but social, involving a "complete renovation" of the "Myriad People." As evidences or forces underlying this movement he points to a dozen or more recent developments; such as, the rehabilitation of the army and navy along the best lines of modern training, the nationalization of the provincial militia, educational reform destined to reconstruct the civil service and intellectually emancipate women, the appointment of modern trained men to high posts in the active mandarinate, the ascendency of progressivists like Tuan Fang, Yuen, and Chang Chi-tung, the traveling high commission to suggest reforms, the present reform activity of the empress dowager, the revision of the penal code by Wu-ting-fang, the work of Sir Robert Hart in the customs service and postal system, the expansion of mining, railways, trolleys, telegraph, and telephone lines and the impulse toward political, intellectual and moral enfranchisement through the demand and efforts for a free press, a new alphabet, abolition of the footbinding and opium habits and the adoption of Christianity as the state religion.

Many of the items of this catalogue, which Dr. Martin ably discusses, will be recognized as tendencies rather than positive and permanent accomplishments, and although a century of constant religious and commercial pressure of the West on China has been preparing the harvest, it requires faith to believe that it will be reaped before relapses, similar

perhaps to those of 1860 and 1900, have occurred. The hopeful signs of a movement toward constitutionalism would indicate that the Manchus had learned from the failure of their reaction to put more confidence in the leadership of progressive Chinamen, and in the example of the oriental "schoolmaster," Japan, but it is safe to say that few of the four hundred millions of China have grasped the true significance of the events of 1900. The necessity for the enlightened Chang to bow before the *fungshui* superstition and close public works at Peking, and the fact that the imperial court can only deny itself to the extent of some $140,000 a year for schools in the entire empire while it expends some $70,000 on a twice-a-week court theatrical troupe, and that the examiners of the old system of education are made the examiners and inspectors of the new are discouraging symptoms, and suggest that our hope for educational reform is to be placed in provincial rather than national initiative.

The author's familiarity with court and city life has led him to concentrate upon conditions there and the fifty and more illustrations from photographs, most of them new, are well-selected toward this end. We could wish, however, that the plan of the book had permitted that the space given to a restatement of the well known facts of Chinese history and topography, attractive though it is made, might have been devoted to those omitted and little known "internal commotions" of the Chinese people that depict their real character and to the conditions and aptitudes of the village or rural dwellers, the great mass of the people, in their relation to effective social reform.

Few Americans will agree with Dr. Martin's advocacy of unrestricted Chinese immigration into the Philippines, but he shows his good judgment in his treatment of the boycott and the demand for treaty revision, recognizing the futility of the aim of China's ruling classes to secure at present a repeal of the exclusion policy and the abandonment of consular jurisdiction. He admits that China must make good through a period of probation like Japan and that three reforms that have been scarcely mentioned in China, adoption of modern costume and the abolition of the curses of polygamy and domestic slavery, are necessary before she is admitted into the full comity of nations. A well deserved tribute is paid to the contributions of Christian missions in the diffusion of secular knowledge in China. The buoyant and animated style of the author of *A Cycle of Cathay* and *The Siege in Peking* and his tendency to reminiscence, while they do not add to the profundity, do immensely to the interest, of a volume like this. JAS. C. BALLAGH.

Modern Egypt. By the EARL OF CROMER. (New York: The Macmillan Company. Two volumes. 1908. Pp. xviii + 594; 600.)

The Egyptian question, wrote Lord Milner in 1892, "has one underlying defect—that it is never simple; it has one ineradicable charm—that it is never commonplace." The two volumes by the master-builder of *Modern Egypt* bear out the statement of his former subordinate. Such an account proceeding from the great British proconsul could not have been in any sense commonplace. If the subject be not clear it is surely not the fault of the present direct, clear and temperate treatment of it. Lord Cromer has that literary style which now and then men of action have developed. With him there is added an ability to make use of allusion and quotation in an apparently incidental fashion, as delightful and illuminating as it is sometimes unexpected. *Modern Egypt* is a book of transcendant importance, not only to the student of modern history and diplomacy, but to those interested in the workings of the British constitution, or in the tutelage of native peoples.

The author's object was twofold: first, to give a narrative of events in Egypt from 1876 to 1892, with an account of the reduction of the Soudan as a continuation; and second, to render a statement of the work actually done during the period of British occupation. Perhaps the greatest popular interest centers in that part of the book concerned with the first object. The narrative begins practically with the creation of the international commission of the public debt in 1876. When Great Britain finally decided to appoint a member of this commission, Lord Cromer, then Major Sir Evelyn Baring, was selected. With the exception of the period from 1880 to 1883, spent in India in administrative service, the author was in Egypt, first as debt commissioner, then as one of the two controllers, and finally, since 1883, as British agent and consul-general. The narrative falls naturally into the divisions represented by his various activities. The first part is largely concerned with the complicated financial matters which marked the failure of the khedivial government in 1876, the attempt at the reorganization of the finances by the commissioners, and the fall of Ismail Pasha. As early as 1857 Lord Palmerston had outlined British policy in Egypt: "We do not want to have Egypt. What we wish about Egypt is that it should continue to be attached to the Turkish empire, which is a security against its belonging to any European power." In 1879 England's attitude was not far different from this. While England and France were then mutually jealous, it was manifestly to the interest of each power that

they coöperate for peace. The desideratum was, by checking the worst of the existing abuses, "and thereby obviating the necessity for further interference, to prevent the Egyptian question from becoming European rather than local." The mutiny of the Egyptian army (1881) was the turning-point in Great Britain's attitude. England was led by France "into a groove hostile to Turkish intervention, with the result that British intervention became eventually a necessity." The joint-note to the khedive of January, 1882, was drafted by Gambetta with Granville's acquiescence. Its effect was that "the British government pledged themselves to a greater degree of interference in Egyptian internal affairs, than the actual circumstances of the case appear to have necessitated * * * From the moment the joint-note was issued, foreign intervention became an almost unavoidable necessity." According to Cromer, therefore, it was the joint-note of 1882, and not the earlier appointment of European controllers, which resulted in the occupation of Egypt. British occupation in 1882 he believes not only to have been the only possible, but probably the best, solution of the then existing difficulties. England drifted by accident into Egypt but by so doing, she did not only what was right, but also what was most in accord with British interests. Such sentiments have a familiar ring, even to Americans. With the return of Baring to Egypt in 1883 the interest is grouped about the question of the Soudan, the evacuation of which he recommended. From this point the narrative is intensely interesting, although Cromer cannot be said to have given Gordon a completely sympathetic treatment. Gordon was an enthusiast, perhaps a mystic, while Baring was a cautious administrator, whose strength some might lay to a lack of imagination, others to a masterful contempt of fixed and logical policies. The author disparages the method of Gordon's selection. He is unsparing in criticism of Gordon's erratic designs and shifting plans, though he praises his courage. Condemnation of Gladstone for the delay in relieving Khartoum is unqualified. "Les fautes de l'homme puissant," quotes Lord Cromer, "sont les malheurs publics," and he adds: "Mr. Gladstone's error of judgment in delaying too long the despatch of the Nile expedition left a stain on the reputation of England which it will be beyond the power of either the impartial historian or the partial apologist to efface." A large part of the second volume is given to a topical treatment of the various phases of the Egyptian problem and of what has been done towards its solution. The Egyptian Puzzle (part four) is a consideration of the position of the dwellers in Egypt: Moslems, Copts, Syrians, Armenians and Europeans. For those

Europeanized Egyptians, de-Moslemized and usually non-Christian, Lord Cromer has little praise. The Anglophobia of the group calling itself "Young Egypt" he admits has not diminished during recent years, and he refuses to concede that this section of the people is in any sense possessed of a national spirit. Internationalism, even of the courts, he regards, perhaps naturally, merely as an obstacle to efficient administration. Part five, upon British policy in Egypt, is a rapid statement of what is correctly called a struggle for a policy. In 1883 Baring proposed the temporary assumption by England of the task of governing Egypt. When the Gladstone government declined definitely to commit itself upon the proposal, Baring then set about evolving order out of chaos. How well he succeeded, part six, describing the reforms (the abolition of the corvée, courbash, and corruption, and the financial and material regeneration of the country, bears witness. The present stage of the Egyptian question Lord Cromer admits is to prevent a relapse into the confusion which existed in the pre-reforming days. For this purpose a British garrison is necessary. Even with the free hand which the Anglo-French agreement of 1904 provides, the ultimate solution of the Egyptian problem is by no means near. "A further Egyptian problem remains behind. It consists in gradually adapting the institutions of the country to the growing needs of the population. Possibly time will also solve that problem, but unless disaster is to come, it must be a long time." Such a question is ever present in an imperialistic régimé. From the standpoint of the governors the institutions of the governed are never quite adapted to the growing needs of the population. Upon reading the brilliant record of Lord Cromer in Egypt one cannot resist the feeling that there as elsewhere, despite appearances, the East is far from the West; that occidental institutions, forms of government, and administration are alien to the oriental minds and that Egypt is still the land of paradox.

JESSE S. REEVES.

The Admiralty of the Atlantic. An Enquiry into the Development of German Sea-power, Past, Present and Prospective. By PERCIVAL A. HISLAM. (London: Longmans, Green and Company. 1908. Pp. xvi + 214.)

The title of this book is adapted from the signal sent by the kaiser to the czar in the harbor of Revel, August, 1902, "The admiral of the Atlantic greets the admiral of the Pacific." Since that time the emperor

of Russia has lost all claim to the admiralty of the Pacific; but according to Mr. Hislam, the ambitions of the kaiser in the Atlantic can not be ignored.

The two chapters, The North Sea Amphitheatre, and The Invasion of England, disclose the supposed objective of German naval development. The book itself is an expansion of an article by Mr. Hislam, entitled The Strategical Features of the North Sea, published in *Brassey's Naval Annual*, 1907. A struggle between England and Germany would take place in the North Sea. Therefore the distribution of the fleet in peace must be such that it would be immediately effective at the outbreak of war. Mr. Hislam does not consider the danger at all remote, and is "actuated throughout by the conviction that the rise of German sea-power is a factor in international politics which England can neither with safety ignore nor with dignity overrate, and firm in the belief that it would be better to sacrifice our dignity than our safety."

In outlining the situation, he treats of such subjects as the inception and development of the German navy, German and British shipbuilding resources, naval bases, and floating docks. In his preface, he suggests but does not expand the idea that Great Britain's most obvious means of crippling Germany would be to impose a tariff on manufactured imports. Thus he would put a check on the commercial development "which alone renders Germany capable of improving, or even of maintaining, her present status amongst the naval powers."

The book is readable, has a special interest for naval officers, and is suggestive to the student of international politics.

FREDERICK C. HICKS.

Turkey in Europe. By SIR CHARLES ELIOT. New edition. (London: Edward Arnold. 1908. Pp. 459.)

This is the second edition of a work published in 1900 under the pseudonym "Odysseus." The diplomatic reasons for concealing the identity of the author have now ceased to exist. Of the qualifications of Sir Charles Eliot for writing a book on Turkey in Europe, no other evidence is needed than a reference to his biography in *Who's Who*. He was engaged in the diplomatic service in the Near East from 1888 to 1898, and in other diplomatic work until 1904. He is an accomplished linguist, and is now vice-chancellor of the University of Sheffield.

The material contained in the first edition has already been adequately reviewed, and does not require further notice here. It deals with the

subject topically under the following headings: Before the Turkish Conquest, Southeastern Europe after the Turkish Conquest, The Turks, Mohammedanism, The Orthodox Church, The Greeks, The Bulgarians and Serbs, The Albanians and Vlachs, and The Armenians. The theme of the whole book is the condition of Macedonia.

The new edition has been corrected wherever events have made it necessary, and two chapters have been added on Turkey in 1907 and The Outlook. In the preface the author says: "From all I hear, Turkey in 1907 is, as one might suppose, not very different from Turkey in 1898." This is confirmatory of his belief in 1898 that "The Turk changes not; his neighbors, his frontiers, his statute books change, but his ideas and his practice remains the same." This statement has a special interest in view of the recent developments in Turkey. Whether this reform in government will be more than a sham, while actual conditions are unchanged, remains to be seen. Eliot's work makes one skeptical as to the sincerity of any party in Turkey. Of the young Turks, who are the leaders in the present movement, he says: "This party has been at all times ineffectual in both social and polical reform." And again, speaking of the relation of the sultan to his subjects, he says: "Of all those liberals and young Turks, there is not one who, when the time for talking is over and the time for action comes, will not submit to his will * * * all the ideas they can form of politics or statecraft are centered in that one personality, and they who would depose him can think of no better expedient than to appoint another like him as his successor."

Our standards of judgment concerning Turkey must be different than for a truely European country, because in Turkey, the temporal and spiritual power are united, and coöperate directly. Through his claim to be the legitimate head of the church, the sultan is able to exercise an autocratic power different in character from that of almost any other sovereign.

Although the new edition of the book has two new chapters, and has shorter pages, it is printed in smaller type, so that it has sixteen pages less than the first edition. There are two folded maps and an index.

FREDERICK C. HICKS.

British Colonial Policy, 1754–1765. By GEORGE LOUIS BEER, sometime Lecturer in History at Columbia University. (New York: The Macmillan Company. 1907. Pp. x, 327.)

The most conspicuous feature of Mr. Beer's essay is its documentation. No similar work on American colonial history has ever been placed on a securer foundation of documentary evidence than has this admirable study of British colonial policy. Mr. Beer has gone directly to sources hitherto inadequately searched or in many respects largely unknown—the books and papers of the British governmental departments—and has drawn therefrom, with extraordinary care and thoroughness, the story which these records have to tell. In the presence of so much speculation regarding the causes of the rupture between Great Britain and her continental American colonies, it is a matter of congratulation that one scholar has shown himself willing to break away from the traditional attitudes of past historians, and to undergo the drudgery which systematic research in the public record office demands. The results are in the highest degree scholarly and convincing. Writers on British colonial policy have largely taken it for granted that in its attitude toward America the home government was either stupid and purposeless or obstinate and malevolent. Mr. Beer demonstrates with entire success that it was endeavoring to carry out a policy that was definite, statesmanlike and consistent, and that this policy seemed hostile only because it was antagonistic to the existing conditions and tendencies in America, where the colonists were so far self-governing and independent that they refused to subordinate their particular needs and interests to the larger imperial concerns which British statesmen were endeavoring to promote.

Mr. Beer has shown that this antagonism was not a matter of principle or theory, the creation of doctrinaire statesmen, but a conflict of two opposing tendencies; one toward empire, the other toward local self-government. Englishmen saw only the Greater Britain that lay before them, of which the colonies were to form a necessary and integral part; the colonists saw only their local liberties and privileges and resented every attempt of the mother country to absorb them into the great imperial system. The colonial side of the case has been repeatedly told; the British side has never before found a narrator, for the simple reason that no one has ever before taken pains to find out what it was that the British authorities were really trying to do. Thus the charges of oppression formulated in the Declaration of Independence were true

only when viewed from the colonial standpoint, they were not true when interpreted in the light of British policy. On the other hand, the apathy and procrastination of the colonies were wholly misunderstood in England, where they were construed as due to an obstinate desire to thwart British plans.

Mr. Beer's investigation has not only made it possible to set the historian right as to the larger issues but it has also led to the correction of a number of minor points that have passed current in our text books. Mr. Beer shows that Franklin grossly misrepresented the British government when he said that it disapproved of the Albany plan of union because it was too democratic, and that in point of effect the crown took no action whatever on the scheme (23 note). He confirms Ashley's view that the attitude of the colonists toward the navigation acts was one of acquiescence and he insists that these acts played little part in bringing on the rupture (208). He asserts that the figures generally given to show the amount of foreign merchandise smuggled into the colonies are largely guess work and deems the estimates of contemporary pamphleteers wholly unreliable. He deems the figures given at the time to illustrate American consumption of tea far too large (245–246), and Franklin's estimate of the men raised, paid and clothed by the colonies during the French and Indian war, in the main, a gross exaggeration. In fact, he feels justified in maintaining that the general broad statements made during the heated controversy of this period, "in so far as they imply that the colonies as a whole were zealous in prosecuting the war are diametrically opposed to the actual facts" (270 note).

Mr. Beer's indictment of the colonies, particularly of the two leading commercial colonies, Rhode Island and Pennsylvania, is a severe one. He shows upon unimpeachable evidence that not only did they, and others, refuse to coöperate in the defense of the colonies in America and betray a lamentable want of public spirit in every crisis, but that they performed covertly what might legitimately be deemed acts of treason against the British government by trading with the enemy in time of war (90–92). The colonial trade in Indian goods with the French enabled them, he thinks, "to keep their promise with the Indians, which in turn encouraged the Cherokees to keep up their war with the English, and almost brought the Creeks to an open rupture." The trade in other goods enabled the French "to equip privateers which inflicted much suffering and prevented the capture of the French West Indies" by the English. Our writers on colonial history would do well to set over against the "oppression" of George III the "treason" of the colonists.

Mr. Beer does justice to that neglected colonial governor, Shirley of Massachusetts, whose influence on the history of the empire he rightly believes has been most inadequately recognized (140). He states what every reader of Shirley's elaborate correspondence knows, that Shirley was one of the few far-sighted governors in America and in no sense deserving to be classed with incompetent and office-seeking politicians.

The chief weakness of Mr. Beer's essay is its neglect of the colonial side of the case. Such neglect is a weakness inherent in any exclusive use of the British state papers. The future historian will need to treat both aspects together, balancing and proportioning the evidence and building up a symmetrical structure. Hitherto, but one side of the case has been presented, the other, alternately condemned and condoned, has been either misrepresented or altogether omitted. It is but just that the balance should be restored and that the British records should be allowed at last to tell their own story.

CHARLES M. ANDREWS.

English Local Government from the Revolution to the Municipal Corporations Act. Vols. ii, iii. *The Manor and the Borough.* By SIDNEY and BEATRICE WEBB. (New York: Longmans, Green and Company. 1908. Pp. viii, vi + 858.)

These two volumes constitute the second installment of the great work on English local government which was outlined by Mr. and Mrs. Webb when they published the first volume at the end of 1906.[1] The first volume covered the parish and the county, and described local government in these areas, during the years from 1689 to 1835, by vestry meetings and county benches of magistrates. In the present volumes, Mr. and Mrs. Webb carry on the story to the manor and the borough. The manor, in 1689, was already decadent as a unit of local government; but the lord of the manor still held the court baron and the court leet; and an understanding of the organization of the manor is, as Mr. and Mrs. Webb show, absolutely necessary for a proper comprehension of the organization and government of the English boroughs, which in most cases had passed through the stage of manorial boroughs before attaining their independence of the lord of the manor, through the acquisition of their charters of incorporation.

[1] This volume was reviewed in *Political Science Review* of February, 1907.

To the student of political science probably the greatest value of Mr. and Mrs. Webb's book will lie in the light it throws on the complete change of political ideals that took place during the transition period which is covered by "English local government." This change is brought out in Mr. and Mrs. Webb's description of the municipal corporations reform act of 1835. In a previous section—when treating of the decay of the lords' courts—emphasis is laid on the contrast between the old ideal of social life in which the root principle was that "however men might differ in faculties or desires, they were under an equal obligation to serve the community by undertaking in turn all the offices required for its healthy life." The eighteenth century ideal which took the place of this root principle, was the "universal equality of civil and political rights." A similar change of political principles and ideals inspired the royal commission which sat from 1833 to 1835 to enquire into the conditions of the boroughs; and the same change may be seen in the municipal corporations act of 1835 which reformed 178 of the boroughs of England and Wales.

Viewed in the light of modern conceptions of property, this act, beneficent as it has been in its results, appears to Mr. and Mrs. Webb almost as revolutionary as would be an act to nationalize the railways of England without compensation to the shareholders. Mr. and Mrs. Webb point out that a borough in its origin merely took the place of the lord of the manor, and acquired from the lord, frequently at heavy money cost, the privileges and jurisdictions which had been the property of the lord. "The municipal corporation," they write, "stood in this respect (in regard to its property) in no different position from the manorial borough and the lord and homage of a manor. All alike held their estates and jurisdictions subject to the liability to have them resumed, varied and regranted, as the changing circumstances might require * * *. Such a conception of private property did not, however, outlive the commonwealth. In the eighteenth century there came to be recognized the absolute right of every legal owner of property to retain it against all comers." And yet in 1835 parliament undertook to take forcibly from its owners the property of 178 corporations leaving untouched some twenty or twenty-five other corporations which in nowise differed from them, and also all the manorial boroughs and the lords of the manor, who held their titles on an exactly similar basis, and to vest this property in "new bodies for the advantage of entirely different sets of beneficiaries, namely not the members of the corporate bodies or the freemen, but the inhabitants at large." Such a course of

action acquiesced in by the nation at large, though opposed by the house of lords, as representing landed property, can only be explained by reference to the new political ideas which had grown up previous to the French revolution and which reached their fruition in the reform act of 1832, and the reforms of local government—the poor law in 1834 and the municipal corporations in 1835 which were the work of the first reformed parliament. It is as illustrating this great change in political ideals and theories that Mr. and Mrs. Webb's book makes the greatest contribution to political science.

A. G. PORRITT.

Stephen A. Douglas: A Study in American Politics. By ALLEN JOHNSON, Professor of History in Bowdoin College (New York: The Macmillan Company. 1908. Pp. 503.)

It is remarkable that Stephen A. Douglas should wait fifty years for an adequately appreciative biographer. Statesmen series have been published for the period preceding the civil war, but the one statesman whose personal contribution to the politics of the time equaled, if it did not excel, that of any other has been omitted from the list. Every detail in the life of Lincoln has been sought out and published. His life has been written and rewritten scores of times. By a crude, sentimental reading of history, such as has characterized special crises in ages of conflict, Lincoln has been made to embody and express all that is glorious in the saving of the Union and the emancipation of the slave. Luther personates the Reformation, Cromwell the Puritan revolution, Washington the founding of our republic, and Lincoln the second great national deliverance; and by the same unreasoning process Douglas, Lincoln's chief political rival, has incurred peculiar reprobation as representing the forces of opposition and hindrance to the policy of the nation's hero. It is, indeed, not to the sentimentalists alone that Douglas has been obnoxious. On account of his natural temperament and because of his transcendant ability as a special pleader, he has likewise fallen into disfavor with those endued with the modern scientific spirit.

Mr. Johnson's book, however, is not written to do justice to a man with whom fate has dealt unfairly. The work is based rather upon the conviction that the events in the life of Douglas are essential to the correct reading of the history of the period. With infinite pains and labor all available sources of information about the man Douglas are utilized to illuminate the history. To the extent of the author's ability

the real man is discovered and his actual relations to public affairs are set forth in clear and elegant English. There is not a touch of whitewash in the book, nor is there any special pleading. The scientific spirit is rigidly maintained under conditions exceedingly difficult.

The reviewer may be permitted to use the materials which the book supplies to do a thing which the author distinctly refrains from doing. He may indulge in a bit of special pleading on behalf of Douglas. Not so much, however, with the purpose of vindicating the man as of promoting a truer understanding of history.

The two rival statesmen of Illinois have been contrasted in the public mind in respect to their personal attitudes towards slavery, and the contrast has been drawn in strong colors. Yet, if we take simply the events of their lives to the date of the death of Douglas, there is really no marked contrast. On the contrary there are striking similarities in their positions respecting slavery issues. Lincoln and Douglas were alike opposed to the abolition agitation of the northern States. Both favored the execution of the fugitive slave law. When Seward put forth his famous doctrine of a higher moral law as justification for a disregard of the Constitution, Lincoln definitely repudiated the claim. Later, in the well known passage concerning a house divided against itself, he did indeed lead some to infer that he was ready to make war upon slavery. But, when called to an account by Douglas, he said he did not mean that the North was justified in making war upon slavery in the South. He had only uttered a prophecy, perhaps a foolish prophecy, as to what was likely to take place. Moreover, he was careful to state that the prediction would not be fulfilled for a hundred years or more.

Now, Douglas, eight years before this utterance of Lincoln, had himself prophesied on the slavery question. He knew vastly more about slavery than did Lincoln, since he was connected by marriage with a slaveholding family. He was also thoroughly informed respecting industrial conditions in all parts of the country. In his opinion slavery never could be extended to any part of the territory acquired by treaty with Mexico. He had, besides, explicitly stated in 1850 that he expected measures for gradual emancipation to be inaugurated in all the border slave states, including North Carolina and Tennessee. Though he fixed no date for this process to begin, the inference was clear that he expected it soon—in much less than a hundred years. As a prophet of evil to slavery, therefore, Douglas was, of the two, much the more radical and explicit.

As a republican leader it was to be expected that Lincoln would hold

to the view that under no conditions should any more slave States be admitted into the Union. Yet, when asked whether, in case the people of a territory, with full and free expression of opinion, should adopt a constitution providing for slavery, he would vote to exclude that territory, he refused to say that he would. So it appears that on this crucial question of party controversy Lincoln was nearer to agreement with Douglas than with the radicals of his own party.

Under the exigencies of debate Douglas declared that he did not care whether slavery was voted up or voted down. As he used the words they were probably intended to simply support his position that the people of the locality without dictation should settle that question for themselves. Lincoln used this expression to discredit Douglas in the eyes of the antislavery voters; yet, a few years later, and when not under any special pressure of debate, Lincoln as president of the Republic, avowed that if he could save the Union without liberating a single slave he would do it. If he could save the Union by liberating some and leaving the rest in slavery, he would do that. Or, if he could save the Union only by liberating all, he would liberate all. These words of Lincoln were also used to his discredit with the antislavery voters.

There is, of course, no thought of maintaining that the two statesmen held identical attitudes upon the slavery question; the effort is merely to call attention to the neglected fact that they agreed more than they differed. This, too, is helpful to a correct knowledge of the real Lincoln.

On the one great question of building up, strengthening and maintaining the Union the two Illinois leaders were indeed identical in spirit and purpose. No one could with any show of reason ever contend that Douglas had less devotion to the Union cause than had Lincoln. It was to save the Union rather than to gratify a personal ambition that Douglas conducted a personal campaign for the presidency in 1860. When, as a result of a State election during that campaign, it became evident that Lincoln would be the successful candidate, Douglas immediately planned an extended tour of the South in the interest of his rival, knowing at the time that his physical powers were already overtaxed and that he would incur serious risk of assassination. He counted not the cost to himself when the life of the nation was at stake.

Douglas bore early testimony to Lincoln's honesty and to his unrivaled ability. When the awkward, untrained and inexperienced president appeared in Washington, Mr. and Mrs. Douglas did more than all others to smooth the rough places and secure for him due recognition. During the early critical months of the administration Lincoln relied upon

Douglas as upon a trusted friend and counselor. The devoted labors of this friend continued, increasing in fervor and efficiency, until the vital forces failed and death ensued. Douglas was as truly and as literally a martyr to the cause of the Union as was Lincoln.

In the preliminary work of extending and strengthening the Union, it was Douglas that bore the burden and heat of the day. When the young Vermonter went West, in 1833, we had no assured foothold on the Pacific coast; but he soon became possessed of the conviction that it was the right and the duty of the United States to occupy and develop the entire breadth of the continent, from sea to sea. He believed that our institutions, combining as they do local autonomy with national control, are fitted to embrace a continent under one beneficent government. As a national legislator, he opposed the treaty fixing the northwest boundary, because, in his view, it involved a surrender of territory. He likewise opposed a clause in a treaty with Mexico, which seemed to preclude our further acquisition of territory. On questions of this sort he was always ready to act alone, regardless of party support. His wide knowledge of the West and his deep interest in that section of the country secured for him the chairmanship of the committee on territories during nearly the whole of his congressional career. As chairman of this committee in one house, he was able, much of the time, to control the corresponding committee of the other house.

For ten years before Douglas introduced his hapless Kansas bill, he had been incessant in his efforts to extort from an unwilling congress much needed legislation for the territories. His relation to the Kansas affairs cannot be rightly understood until it is studied from the point of view of the ten year's previous history. In such matters he had been accustomed to act upon his own responsibility, with little regard for the opinions of others. Though a candidate for the presidency, he was no weathercock. No candidate was ever more explicit in refusing to accept the office save upon his own terms. By relentlessly following out his own policy in respect to Kansas he incurred the opposition of his own constituents and gave mortal offense to the entire antislavery North. Then, a little later he took the field as the most effective leader of the antislavery forces against the Buchanan administration.

On the one question of extending and strengthening the union of the states Douglas took no account of consequences to himself. Many years before he had secured the enmity of the antislavery North, and he had also won the displeasure of the extreme proslavery South. He charged upon the radical South the responsibility for northern abolitionism, and

he gave the South timely warning of impending danger. When an eastern congressman in opposing the bill for a territorial government for Oregon, suggested that the people of the Northwest ought to be encouraged to form an independent republic, Douglas administered a scathing rebuke. At no time would he tolerate the slightest hint of the separation of any territory from the Union.

If we are to continue to use the name, Abraham Lincoln, as personating the whole period of the struggle for the Union, then, for the long years of Lincoln's obscurity we must fill out the life by the deeds of men more active. For this part of the life of Lincoln Mr. Johnson's book furnishes material. From it we may get a more illuminating view of the ideal saviour of the Union than has thus far been written. Douglas did for the Union what the ideal Lincoln would have done had he possessed the same temperament, the same intellectual qualities and the same opportunities.

JESSE MACY.

Life and Public Services of William Pitt Fessenden. By his son GENERAL FRANCIS FESSENDEN. (Houghton, Mifflin and Company. In two volumes.)

William Pitt Fessenden was born in 1806 and died in 1869. At the age of twenty-four he was elected as a republican to the Maine legislature. In 1840 he was elected by the whigs to the lower house of congress. His first experience in congress was during the trying years when the man who had been made president through whig votes incurred their bitter opposition. Fessenden became much disgusted with politics and for the next twelve years he devoted himself to the practice of law. In the meantime, however, he served another term in the State legislature, took an active part as a campaign speaker, and was an unsuccessful candidate for congress in 1850. When Stephen A. Douglas introduced his Kansas-Nebraska bill, in 1854, Mr. Fessenden was chosen by the free soilers to the United States senate. From this time to the day of his death his public official duties were continuous and exacting. He was a senator all of the time, save a few months during 1864 and 1865 when he was secretary of the treasury.

Mr. Fessenden's life covers a period of rapid political change and readjustment. In 1831 he was a republican. A few years later his party had taken the name of whig. After 1852 Mr. Fessenden united with those who repudiated the whig name and organization and for a few months

were known as free soilers, and then assumed the older name republican. At one time Mr. Fessenden was known as a radical, at another he was classed as a conservative, though few men have presented a more logical and consistent public career. His father held a leading position as an abolitionist, yet he was himself at no time in sympathy with the early abolition movements. His first experience in congress was at the time when John Quincy Adams was fighting the battle against the slaveocracy in favor of the right of petition. Mr. Fessenden early reached the conclusion that it was the duty of the North to unite against the encroachment of the slave power. Before the Mexican war he favored the formation of a northern political party. On this question his views were radical. He was a convinced northern republican twelve years before the party was organized. He was utterly opposed to every form of compromise in the interest of slavery and met the threat of secession with defiance. In his first speech in the senate in 1854 he gave notice to the South that, so far as he was concerned, the sooner they seceded the better.

While on one question Mr. Fessenden was a radical of the radicals his natural temperament was conservative. He was guided in his policy by intellect rather than by sentiment. At the age of twenty-five he took emphatic ground against the policy of instructing the members of the legislature as to how they should vote on a specific question. He held that it was the duty of the legislator to take account of all available sources of information and then to act upon his own conviction regardless of popular clamor. At the same time he was keenly appreciative of popular approval. These qualities gave to his life the elements of real tragedy. His remarkable power of accurate forecast often made him conscious of his own duty in an approaching emergency, while he was also certain that the act contemplated would be offensive to his constituents.

So long as the questions of slavery and the Union were dominant issues Mr. Fessenden was a most effective leader of the radicals in congress. On matters of finance and reconstruction he was consistently conservative. He incurred the bitterest enmity of the radical leaders who forced upon the country the impeachment of Johnson. From the very beginning Mr. Fessenden seemed to foresee all the dire consequences of that movement and with all his powers he set himself against it, though keenly conscious that he was incurring the reprobation of his nearest friends. Probably no man had a clearer perception of Johnson's defects. He disliked the man personally. In the midst of

the trial he wrote, "If he was impeached for general cussedness, there would be no difficulty in the case." A little later he wrote, "This trial has almost killed me, and will probably quite do so by the time it is finished." He, however, survived the impeachment trial a little more than a year.

One cannot read this life without realizing that men have given their lives to their country in ways which required a higher type of courage and manhood than is exhibited by the mere military hero.

The two volumes which present the public services of Senator Fessenden give evidence of a large amount of labor in the collection of materials. The volumes are for the most part made up of letters, and quotations and paraphrases from speeches, public records and newspapers. The material selected is in general well adapted to exhibit the character of the man and his times. It is to be regretted that the materials were not arranged for the greater convenience of the reader. The chronology is often confusing. No dates are given at the top of the page, and in the text the year is usually omitted from the dates given. There is, for instance, a very definite statement as to the day and the month in which Senator Fessenden died, but it requires a considerable effort to make out from the text the year of this event. Even when one is reading the entire text in order the dates as given are confusing and sometimes misleading. With a change of subject a different year is required which the text does not indicate. JESSE MACY.

The Legislature of the Province of Virginia: Its Internal Development. By ELMER I. MILLER. (Columbia Studies in History, Economics and Public Law. Pp. 176.)

This is a monograph based chiefly upon Hening's *Statutes* and upon the *Journals* of the two houses of the Virginia assembly which are accessible in America. The introduction calls attention to the general and special difficulties of the subject and describes the forms of legislation which prevailed in Virginia before 1619. The first chapter presents a careful narrative, both chronological and topical, of the assemblies from 1619 to 1624. The next chapter begins with the session of 1625, and the treatment is thereafter topical. Four chapters are devoted to the house of burgesses, the qualifications of its members, its organization and its procedure. One chapter is given to the governor and one to the council as parts of the legislature, and the concluding chapter treats of the legislature as a whole.

Dr. Miller's painstaking search through the statutes and the journals results in an array of facts that as a rule leaves little for subsequent investigators to gather. His interpretation of the facts which he has gleaned exhibits familiarity with the literature devoted to Virginia history. Thus he follows Stanard in controverting Story's egregious error as to the cessation of the assembly's sittings in the reign of Charles I, and elaborates W. W. Henry's list of occasions when the legislature asserted the right of self-taxation. The volume successfully achieves its declared purpose of describing the institutional development of the Virginia assembly. The discussion of the wider relations of Virginia history to that of England and the other colonies is not always so satisfactory and indicates that the author has neglected to some degree the recent monographic work of others. For example, the error (perhaps a misprint) in Thwaites' *The Colonies*, where 1746, instead of 1740, is given as the date of the English act for naturalization in the colonies, is taken over bodily by Dr. Miller. An examination of Carpenter's study of *Naturalization in England and the American Colonies* would not only have prevented the slip in the date, but would have enabled Dr. Miller to improve his account of the measures concerning naturalization that were passed by the Virginia assembly. An excellent analytical table of contents makes clear the topical plan upon which the monograph is developed. The bibliography suffers from some misprints.

Railway Corporations as Public Servants. By HENRY S. HAINES. (New York: The Macmillan Company. 1907. Pp. 233.)

This book is the outgrowth of a series of lectures delivered by the author at the Boston University School of Law. The author states in his preface that the present work supplements in a way his previous work on *Restrictive Railway Legislation.* The subject is presented in nine chapters or lectures, no footnotes or authorities being cited outside of the body of the text. The material is presented in a popular manner; and the book is interesting throughout, though more or less of a repetition of the author's ideas on railway problems as presented in his other works. The present work, however, brings the discussion of the railway question down to date, and serves well the purpose for which, no doubt, it has been published—a popular treatment.

The nine chapters of the book are as follows: I The Nature of a Public Service; II The Public Service of a Railway; III The Public Benefits Conferred by Railways; IV The Public Burdens Imposed by

Railways; V Recent Federal Legislation; VI The Results of Ineffectual Control of Railway Corporations; VII The Reasonableness of Railway Rates; VIII The Standard of Railway Service; IX The Proper Regulation of Railway Service. The eighth chapter contains a highly interesting account of the recent Hill-Harriman activities in railway manipulations. In the last chapter Mr. Haines shows himself to be decidedly opposed to government ownership as a remedy for railway evils and abuses, though favoring federal supervision. We are not quite sure that the gloomy picture of the consequences of government ownership, as drawn by Mr. Haines, would be the natural resultant of such ownership. Our observation of government owned railways in Europe leads us to the conclusion that many of the regulations in force there might well be introduced here, though it may be possible to attain the same results by federal regulation, provided such regulation is thorough and effective.

FRANK EDWARD HORACK.

American Diplomacy under Tyler and Polk. By JESSE S. REEVES. Ph.D. (Baltimore: Johns Hopkins University Press. 1907. Pp, 335.)

Both as an interesting chapter in the history of the diplomacy of the United States, and as dealing with an important and but recently exploited period of our national politics, Dr. Jesse S. Reeves's *American Diplomacy under Tyler and Polk* is a timely and welcome work, which embodies the lectures delivered in 1906 before the Johns Hopkins University, upon the Albert Shaw foundation in diplomatic history. To the lectures as then delivered Dr. Reeves has added as two concluding chapters, one which contains the report of Mackenzie, delegated by Polk to confer with Santa Anna at Havana, in June, 1846 (here printed for the first time), and one upon the treaty of Guadalupe Hidalgo, which appeared in the *American Historical Review* for January, 1905. The sources of the book are found, first in the state papers, and the correspondence of Webster, Calhoun, and other leading actors in the tangled negotiations of this period, and secondly in the diary of President Polk of which Dr. Reeves has made a careful and critical study. Thus excellently documented the volume is of importance to all who wish to work in this field, while the easy style in which the book is written invites the attention of the general reader and will make it serviceable to younger students.

Avowedly limiting his treatment to diplomatic history, Dr. Reeves has chosen to restrict further his subject-matter to the four important questions which, in these two administrations, were prominent in the public mind, and has omitted the lesser problems of foreign relations. These four matters were all concerned with the territorial limits of the United States, and involved as the other parties to the disputes Great Britain and Mexico: with the former, the boundaries on the northeast and the northwest were at issue: with the latter, Texas and California constituted the debatable ground In each case Dr. Reeves has given a careful outline of the earlier phases of the controversy, afterwards developing in detail the settlement—whether by peaceful negotiation or as the result of war—which was reached under Tyler and Polk. The masterful and patient work of Webster, and the successful accomplishment of the Ashburton treaty are discussed and brought to a conclusion in the early chapters: our relations with Mexico are then traced to the time of Webster's resignation from Tyler's cabinet; the question of the annexation of Texas as handled under Tyler by Upshur, and after the latter's tragic death, by Calhoun, is brought down to the beginning of Polk's administration and to the annexation by joint resolution: next is taken up the northwestern boundary question in its origin, through the period of joint occupation, and the Oregon treaty of 1846: fi ally Polk's determination to have California, the missions of Parrott and Slidell, Polk's negotiations with Santa Anna through Atecha and Mackenzie, and the curious selection, as confidential agent to arrange a peace, of Nicholas Philip Trist, bring the volume to a close with the conclusion of the treaty of Guadalupe Hidalgo.

The negotiations with Great Britain during the period under consideration have been thoroughly worked over, and in a new treatment of them it is the author's judgment of persons and cases rather than additions to our knowledge that is of chief interest. Dr. Reeves' narrative is eminently fair in its tone, and is cordial in its appreciation of Lord Ashburton, Lord Aberdeen and Sir Robert Peel. But about the dealings with the Mexican government, the causal relations between the Texas and California questions and the Mexican war, and the personality of President Polk, there has been more of an air of mystery. It is in just this field that the clear analysis and keen criticism of Dr. Reeves' book are most apparent. The central thesis is this: that the Mexican war and the conquest of California formed a distinct episode, completely disassociated from the annexation of Texas. Hence Dr. Reeves stands in the attitude of sharp criticism of the older view elaborated in Von

Holst's history, that these two events were but links in the chain of a southern conspiracy for territorial expansion in the interest of slavery. Dr. Reeves' conclusions thus far agree with those of another grateful student of this period, Prof. George P. Garrison of Texas. With Dr. Reeves' account of Jackson's policy toward Texas should be compared the article in the *American Historical Review* for July, 1907, by Prof. E C. Barker.

The author gives succinctly the reasons for the misconception of Polk and his administration. These were "the rapid succession of political events ending in civil war" by which "public attention was drawn away from the causes to the consequences of the Mexican war." Books appearing soon after the event, animated not by a spirit of unbiased historical investigation, but written with the professed purpose of presenting a brief against the aggressions of slavery, have furnished in large measure the materials for the history of the period. The treatment of the subject of the Mexican war in the 'reviews' of Jay and Livermore, well constructed and widely distributed as they were, and fortified by an examination of published documents and newspapers, has grown into the narrative of Von Holst."

The sources, and especially the record of Parrott's mission and the instructions given to Slidell prove, on the contrary, two things: (1) that the Mexican war was *not* the result of the annexation of Texas, and (2) that the reopening of diplomatic negotiations with Mexico was for the purpose of securing California by purchase. Claims against Mexico unsettled since Jackson's day, the undetermined boundary of Texas, Mexico's unwillingness or inability to pay in cash were to lead to a demand for territory; and the clash of the Mexicans with Taylor was a lucky accident, not the cause of the war, which would have been declared whether this had taken place or no.

Of Polk no final judgment is given; it is made evident that he was far from being the political nonentity pictured in the older accounts. But if strong, was he wise or just in his dealings with Mexico, or "firm" in his attitude to England? Dr. Reeves, if one may judge from his criticisms of individual acts, would seem to answer negatively, or at least with an accent of doubt. But he has not undertaken to write Polk's biography, and thus is justified in a rather non-committal position. The same attitude is maintained in Professor Bourne's paper upon The United States and Mexico, written eight years ago. Professor Garrison, on the contrary, in his recent *Westward Extension*, speaks of Polk's "sincere faith in the righteousness of his own purposes and of the means

he used to attain them." Not until the voluminous correspondence of Polk shall have been subjected to the same criticism which has recently been devoted to his *Diary* will it be possible justly to estimate the man.

ST. GEORGE L. SIOUSSAT.

The Struggle for Self-Government. By LINCOLN STEFFENS. (New York: McClure, Phillips and Company. 1906. Pp. 294.)

This volume comprises a collection of magazine articles, having for their purpose the portrayal of political conditions in selected cities and States. The aim of the author is to show that these conditions are not local but widely distributed and deep-seated. Mr. Steffens contends that the loss of "self government" is due to a systematic attempt on the part of the "system" to control legislation and administration; and because of its activity in local, State and national affairs, the people must likewise be alert if they do not desire to abrogate their rights of self-government. The purification of our city governments is not the solution, for the "system" will go to the State government and secure its ends for the reason that the cities are dependent upon the State legislatures for their powers.

The attempt of the larger commercial and corporate interests to control legislation and administration is probably not wholly incident to our American political system. In any period of great industrial and commercial activity, the influence of government upon business undertakings must necessarily be great, and it is natural that the business interests should attempt to control the legislative and administrative policies. If it is true, as is so stoutly contended, that morals in commerce and in industry are low, this condition is certain to affect politics, because of the intimate relations of government to business. Permanently higher standards in public life must obviously be accompanied with higher standards in business life. The alertness of business interests in politics, coupled with the supineness of the people, has done much to make possible the conditions pictured in this volume. Professional politicians have played their part in the plan for the control of government in the interests of corporate wealth. They have been ready to enter into compacts which involved the rights of the public. It is not surprising that our party system has been employed as an instrument for the perversion of the rights of the people.

The conditions discussed by Mr. Steffens have long been known to

the students of government, but a service has been rendered by bringing them to the attention of the public with the realism of a trained reporter. Surface conditions in other States seem to indicate that the corruption and perversion of public rights are not incident to the States and cities described in this volume. In fact, events have transpired elsewhere since its publication that indicate a wide operation of the "system."

One gains the impression that Mr. Steffens has not told all that was found in the conditions described, on the ground that all the truth might engender a pessimism which would be fatal to wholesome results. In fact there is hopefulness for the reason that the powerfully entrenched "system" has been overthrown where a proper leader of the people has taken up their cause.

But the most hopeful indication is that the corporate interests are now changing their attitude toward government. In those States where the people have come to their rights and effectively control the situation—notably in Wisconsin—no longer do corporations attempt to secure legislation or to prevent it by the devious methods of former days. Open, fair discussion and consideration of measures upon their merits is now the rule. This change of front is largely due to the fact that all interests, private and public, are considered with fairness and justice. When the former antagonisms, the offspring of a predatory system, are broken down, self-government will be realized, upon a basis of justice in which the rights of all will be fully protected. In the meantime some drastic work must be done in many of our States and cities in order to lay the foundation for constructive legislation already under headway in a few of the States and cities.

The value of Mr. Steffens' volume consists largely in a vivid portrayal of conditions which have made possible the work of the system—a composite of social, political and business interests. The author came to this task with the training of a reporter, and while some of the defects of this training are apparent in style and method, still the main purpose of the volume is fully realized.

S. E. SPARLING.

The France of Today. By BARRETT WENDELL. (New York: Charles Scribner's Sons. 1907. Pp. 379.)

Some years ago Mr. Bodley published his elaborate work in two volumes on France. He had been engaged on it over seven years. The present volume is not a work of the nature of Mr. Bodley's. It consists

of eight chapters: The Universities, The Structure of Society, The Family, The French Temperament, The Relation of Literature to Life, The Question of Religion, The Revolution and its Effects, The Republic and Democracy. In the form of lectures these were delivered in the Lowell Institute, Boston, in 1906, and four of them later published in *Scribner's Magazine*. They are written in a delightfully easy style and the reader finds himself going from one page to the next with increasing delight. Numerous anecdotes enliven the author's narrative and serve to fix the points he wishes to make.

The basis for writing them was one year of observation of French manners and customs which the author enjoyed while lecturer at French universities under the Hyde foundation. Mr. Wendell is a keen observer and though a longer residence might have changed his views in respect to some things—notably in regard to that over-burdening seriousness of the French professional school student—nevertheless the book is abundantly welcome because it serves in so many instances to correct wrong impressions which casual American travelers have received of French life.

Only the most important of these may be mentioned here. So much has been made of German scholarship that it is a pleasure to have in print something which shows the very high standards of French professors. Those who arraign France for her stationary numbers in population should dwell on the sentence: "The puny squalor of childhood, familiar to any eye in England or America, in Germany or Italy, or almost anywhere else, is hardly found among the French." Those of us who with borrowed finery of language are accustomed to dub people or things "bourgeois" will find that "bourgeois" is very different from the ordinary acceptation of the sense of that word in England and America. Of the peasants or masses the author acknowledges he saw nothing, but his picture of the felicities of the "foyer" and the high moral tone of French family life will come as a surprise to those who have received their impressions of all of France by seeing life on the boulevards, in students halls or in the cafés of Paris. With sensible appreciation he shows us why it is that the French novels by even such worthy men as members of the French Academy are no index of what true French life is. Whatever may be said to the detriment of a Frenchman's morals his talk with other Frenchmen is not baudy—a state of affairs which is only too frequently reversed in America and England. "The French are given to writing things which they would not say; English-speaking men are given to saying things which they would not write." Substi-

tute "doing" and "do" in place of "writing" and "write" and the sentence would be just as true. In America some of the baudiest talkers are most correct in moral rectitude.

The author touches on the whole question of religion with singularly good taste. He quotes one French lady to the effect: "Any one can see our frivolity, but no one can know us who does not know our piety." He also gives a clever account of the intolerance of the anti-clericals: "No clerical intolerance was ever more sincere or more unrelenting than the anti-clerical intolerance of these very times."

For the trained historians the chapters on the Revolution and the republic will prove tame reading, but for the general reader they will prove enlightening. Like most recent writers on France, Mr. Wendell feels that the present form of government in France has a better chance for continuance than any of its predecessors since the Revolution. The weakest chapter in the book is that on French temperament. Here the author occupies some forty-six pages in stating that Frenchmen are fond of scientific classifications and systems. Outside of some obvious padding, however, the book is of greatest value in giving the reader a true appreciation of France and Frenchmen without overburdening him with encyclopedic details. On French government and politics he does not touch.

JAMES SULLIVAN.

American History and Government. By JAMES ALBERT WOODBURN, Ph.D and THOMAS FRANCIS MORAN, Ph. D. (New York, Longmans, Green and Company. 1906. Pp. lxxxviii, 476.)

This volume represents an attempt to satisfy the demands of those who believe that American history and government may be best taught from a single text. The book is intended for use in the last two years of the grammar school—that is for pupils of twelve and thirteen years.

In method of treatment the work does not differ very much in its narrative portions from former texts intended for similar grades. An attempt is made in an introductory chapter to connect American history with mediaeval and ancient history. The story of exploration, colonization, the anglo-French conflicts, and the Revolution is brought down to the formation of the Constitution.

After a chapter on the last topic there are inserted seven chapters on American government: The New Government; The Senate; The House

of Representatives; The Judiciary; The States and Local Government; The Territories. The narrative is then resumed with a chapter on the new government and the supremacy of the federalist party, and is continued to the end of the book after the manner of other texts.

The seven chapters on American government form the distinctive feature of the book. How successfully they may be taught, placed as they are, is problematical. The authors find themselves called upon at this early point in the book to make references to events in 1804, 1829, 1892, and 1903. In discussing the presidential power of appointment, for example, the civil service examination system is brought in. Again and again the student, who, in the political narrative has gone only as far as 1789, is referred to such matters as the Wilson tariff of 1894, the change in the method of electing senators in 1866, the present salaries of State legislators, the government of Porto Rico and the Philippines. After this long digression the pupil is taken back into the politics of Washington's time. How confusing this will be to the pupil can be imagined.

Yet the authors quote so high an authority as the report on history in the schools of the committee of seven of the American Historical Association as a warrant for treating American government as a part of American history. The whole question resolves itself into the query as to whether American government, as it exists today, can be taught as a part of American history. The advocates of the teaching of American government—now usually called civics—in the schools wish the pupils to know how the government is actually working today. Only such references to the past as are necessary to explain present conditions are felt to be needful. The committee of seven, however, did not distinguish between constitutional history, which is properly included in any American history text, and a static view of American civil government or civics.

Fault is not found here with the book, but with the recommendation which gave it birth. The confusion arising from the insertion of the seven chapters above mentioned is a necessary evil of the attempt to follow the committee of seven's advice. The remainder of the book is as good as if not better than most of the elementary texts on American history. It appears to be pretty hard reading for pupils of twelve and thirteen, but it is attractively gotten up, is well illustrated, has at the close a series of "chapter reviews," containing questions on the text and also "references" for outside reading arranged by chapters. The books cited are usually more appropriate for teachers' than for pupils' use.

The questions in the chapter reviews are such as an even slightly intelligent teacher could put. Questions of a suggestive type, which any teacher might have to spend some time in framing, could very well have been put in place of the purely "quiz" questions on the text.

Unimportant topics have been eliminated remarkably well, but there are several lapses in this respect. Such a one appears on p. 240, where, after Genet's recall, we are told: "He did not return to France to live, however, but remained in the State of New York, married the daughter of Governor Clinton, devoted his attention to agriculture, and died in 1834." A proneness to insert too many names and dates and a very inaccurate drawing of latitudinal lines in the map on p. 34 are minor defects.

JAMES SULLIVAN.

Studies in American Jurisprudence. By THEODORE F. C. DEMAREST. (New York: The Banks Law Publishing Company. 1906. Pp. xviii, 359.)

This treatise might better be named Studies in the Law of New York. However each chapter may be named, the reader is quite sure, before long, to find himself invited to investigate the soundness of some judicial decision rendered in that State or the scope of some provision in its codes.

It is a poor book. One is wearied by the sophomoric and ill-jointed style, as well as by the elephantine humor. The author writes, he tells us, to give himself "the boon of beguiling the donor of a leisure hour into paths, rugged indeed, and sometimes reproached with undue aridity, where tower venerable and majestic growths, the fruitage of which, though hanging high, and of hardy pericarp, yields, to the breaker, kernels of intellectual nutrition, unrivaled by the fairer harvests whose burnished clusters glow and regale in the gardens of the imagination."

The chapter on the Office of President of the United States is the freest from local color. The author announces that he has attempted to "confine attention to the office apart from personality, and to consider history and the law, without wandering into Utopia, or doling *ex cathedra* dialectics." A shade of doubt is cast upon his success in this respect when, after explaining that sovereignty is no attribute of any American official, he adds that "the adulatory aspirant may find himself able to contemplate, without convulsions, the spectacle of a sole corporation

clothed with majesty and loaded as to his pockets with innumerable sovereignties, hurled right and left, in rotation, at crying needs or evils which are neglected by the Constitution, congress and courts" (p. 59), although it must be admitted that "occasions inevitably supervene when a physical and nervous necessity demands a vent for the automatic initiative by way of a referendum to the Colorado *felidæ* or a pursuit of the bear through the wind-falls of the Rockies" (p. 80).

"Is," he goes on to ask, "Jefferson's word of warning that the tyranny of the executive will arrive in its turn, coming true? Is this the age of executive usurpation? No. Our president is confessedly a magistrate. This is a generic term. The medieval battles between nominalists and realists left the world convinced that a genus is nothing, and must be reduced to a species before we have a recognizable entity. Hence by virtue of the retention of the magisterial functions of the Plantagenet and Norman rulers, all American governors, senators, judges, president, and sultan of Sulu enjoy in common a mild preëminence which no thoughtful and benevolent mind will begrudge them" (p. 75). "Nevertheless," says the author, with an eye on Macaulay's New Zealander in the wastes of buried London, "the prophecy of Jefferson will be fulfilled in that late age when the future antiquarian, in latitude 40° 42′ 43″ N., longitude 74° 0′ 3″ W., delving deep in the lava bed of Storm King, turned volcano, shall lift from her crumbling, upstretched arm, the lightless torch of the Statue of Liberty" (p. 88).

It is superfluous to add that this book merits no place among works of political science.

The American Lawyer: As He Was, as He Is, as He Can Be. By JOHN R. DOS PASSOS. (New York: Banks Law Publishing Company. 1907. Pp. 185.)

This book is a violent attack upon the American lawyer. To the author our bar seems far inferior to that of the era closing with the Civil War (pp. 12, 33, 46); given over, in the argument of causes, to an ignoble hunt for ruling precedents instead of a search for determining principles; besotted by idolatry of codification (p. 51); ignorant of its obligations to the State; solicitous mainly to make money, and to make it with little regard to what may be the rules of professional ethics. To write in this vein upon any subject, is an easy way to challenge public attention. It is what helps so much to carry the ten cent monthlies and

the yellow journal. But it is hardly worthy of one whose declared aim is to elevate the standards of an important profession.

The author's criticisms of American methods of legal education indicate a want of familiarity with what they are. He assumes that generally little or no instruction is given in the elements of law and the science of jurisprudence, the attention of the students being bound down to books of reported cases (p. 167). As a matter of fact, the great majority of American law schools during the early part of their course give most of the time to elementary instruction in the outlines and principles of law, and throughout it make references to cases a subordinate part of the instruction offered. But a handful of schools (though comprehending several of the more important ones) are exclusively committed to what is known as the "case system." So, too, the author is in error in assuming that hardly any of the instructors in our law schools have any practical knowledge of the profession, and are mere theorists (p. 55). In fact, the vast majority of them either are or have been practicing lawyers, or judges.

The lawyer who writes of law fails, says Mr. Dos Passos, to grasp its more comprehensive relations (pp. 4, 5), and to give any adequate distinctive treatment of what these are, as respects society at large. One is inclined to wonder how much he has ever read of such books as Pollock on *Jurisprudence* or George H. Smith on *Right and Law*.

The courts fare no better. It is hardly to be imagined, he declares, what "a mass of bad reasoning, illogical conclusions, disregard of the rule of *stare decisis*, contradictory statements, and an ignorance or contempt of the history and spirit of the Constitution of the United States and of the several States, such a lack of knowledge of elementary law and of the principles of jurisprudence" is presented in the decisions of our courts of last resort during the last twenty-five years (p. 18). On the contrary, most of those who have compared with any care the reported judgments of American courts with those of other countries, will be found in agreement that the better American judicial opinions are, on the whole, superior to the better foreign opinions. They are more carefully composed than those of England; more consistent and better reasoned than those of continental Europe.

The truth is that the point of view taken by Mr. Dos Passos is provincial. It is that of the lawyer of New York city. It is that of one who practices before courts so overburdened with business, that briefs have largely taken the place of oral argument, and the rapid accumulation of decisions obscures the recollection of some that ought to be respected as ruling precedents (p. 17).

Among the remedies which Mr. Dos Passos suggests for the evils which he depicts, are that seven years should be required for a legal education, of which three should be spent in a lawyer's office (p. 166); that such books as Paley's *Moral and Political Philosophy*, Burlamaqui on *Natural Law*, Montesquieu on the *Spirit of Laws*, and Puffendorf, *De Officio Hominis et Civis juxta Legem Naturalem* should be read by every student; that attorneys should be a class distinct from counselors or barristers; and that all lawyers should wear gowns (p. 183).

These recommendations have rather an archaic aspect. Is Paley, with all his limitations, to be forced down the throats of the children of an age in which evolution has put all philosophy upon a new basis? Are we to revert to a practice only kept alive by tradition in England, under which a client in every considerable law suit must pay for two lawyers and see but one of them? Is three years in a lawyer's office, with its weary routine of copying papers and running errands to be demanded of every law student when, if the lawyer be a busy one, he will have no time to instruct his clerks, and, if he be not a busy one, he will, except for a few details of practice to be learned in a month, be not so well equipped for that service as the instructors in the law school where the previous four years were spent?

Mr. Dos Passos has put into this treatise a good deal from which foreign critics of American institutions will quote with satisfaction, but very little which those really familiar with those institutions will find of value.

The Grand Jury. By GEORGE J. EDWARDS, JR., of the Philadelphia Bar. Philadelphia: (George T. Bissel Company. 1906. Pp. 219.)

The author has divided his book into four parts with no subdivisions into chapters. Part one deals with the origin, history and development of the grand jury. The account follows texts and commentaries on law, some special essays on the subject mostly. The great works on constitutional history and recent monographic literature were apparently not very extensively used. In a note on p. 44 there is a statement to this effect: "In Minnesota the people by a large majority vote, have adopted a constitutional amendment abolishing the grand jury." The author was evidently misled by inaccurate press reports which did some violence to the facts. What Minnesota has done is not to abolish the grand jury, for the institution exists today just as it did before the recent amendment, but to make it a creature of the legislature subject to alteration by statute. So far no essential changes have been made.

Parts II, III and IV deal largely with the law and the practice of the grand jury. The work is well done and ample citations are given. The book contains a full table of cases and a good index.

WM. A. SCHAPER.

State Documents on Federal Relations. By HERMAN V. AMES, Ph.D. (New York: Longmans, Green and Company; Philadelphia: The Department of History, University of Pennsylvania. Pp. 318.)

This is a collection of documents in very compact and convenient form, dealing with the relation of the States to the federal government dating from 1789 to 1861. It is a source book for the use of classes in American history, primarily, of course incidentally also for classes in American government.

The longer documents are not reproduced in full, only the essential passages bringing out the point in question are given. The notes are full and the index is good. The book represents a vast amount of labor in collecting, in editing and preparing the notes. It ought to be very serviceable and useful to the teacher.

WM. A. SCHAPER.

Robert Lucas. By JOHN C. PARISH. Iowa Biographical Series, edited by Benjamin F. Shambaugh. (Iowa City, Iowa: State Historical Society of Iowa. 1907. Pp. xv + 356.)

The first governor of Iowa Territory has received worthy treatment from the Historical Society of his adopted State. First, it published his executive journal (1838 to 1841); then, his journal while a soldier in the War of 1812, and now a biography follows. The typography and paper are excellent, as was the case in the earlier volumes, and the book is illustrated with three portraits of Lucas, which show a remarkable resemblance to those of Andrew Jackson. This life of Governor Lucas has been written by John C. Parish, who edited the journal in the War of 1812, and who has carefully studied Lucas's career in Iowa, and his earlier activities in Ohio. Mr. Parish may be congratulated in having written a book which is scholarly in method and interesting in style. Much of such biographical work remains to be done, so as to bring out in their true light the lesser notabilities of American history and it is to be hoped that equally competent men may take up

other such lives, whose careers help to explain many points in our history. Lucas was born in Virginia, but early in life removed to southern Ohio. He took much interest in militia matters, and was a soldier in Hull's ill-fated Detroit expedition. He also served in the State legislature as an ardent Jeffersonian republican for many years. In 1832, he was president of the first democratic national convention at Baltimore and, from that year until 1836, he served as governor of Ohio. The most important event during his administration was the so-called Toledo War between Ohio and Michigan over their boundary. The esteem he gained from his State caused the people to name the county in which Toledo is situated for him. In 1838, he was appointed governor of Iowa and there, curiously enough, became involved in a similar boundary difficulty—this time with Missouri. The record of his efforts to promote temperance, economy in administration, and education is interesting and helps toward our understanding the evolution of territories into States. After President Harrison removed Lucas from the governorship, he continued to reside in Iowa and died there in 1853. The sources used by the author of the *Life* are given in the notes, which are grouped together in the back of the book, and there is an excellent index. A careful reading of the book has disclosed few misprints and but one mistake by Mr. Parish and that one a use of the word *brigade* for *regiment* on p. 10. The later numbers of the Iowa Biographical Series will be most useful to students of history and politics, if they maintain the standard Mr. Parish has set up in this initial volume.

Registration of Voters: A Practical Guide for the Preparation of the Lists. For the Use of Overseers, Assistant Overseers, Vestry Clerks, Town Clerks, Registration Officers and Rate Collectors, and all Persons Connected with the Registration of Electors. By M. MOLONEY. (London: Sweet and Maxwell, Ltd. Pp. ix, 261.)

The Registration of Voters is intended for the use of the men whose duty it is to prepare the lists of voters in parliamentary constituencies. It is a practical manual, based on the precept sent out each year to the registration officers under the registration order in council. This precept sets out in detail and in chronological order the duties which registration officers must perform in the preparation of the voters' lists. The method followed by Mr. Moloney, is to print in small type a section of the precept, followed by explanatory notes in larger type. The notes warn the

officers of possible mistakes and pitfalls, give definitions of doubtful terms and give explanations intended to make clear the duty of the officer under the precept.

The work of registration in England is highly complex. The lists are not identical for municipal and parliamentary elections, and even for parliamentary elections there are differences between the registration list for a county division and that for a borough. Lists must also be drawn up for county council elections, borough elections, urban and rural district and parish council elections. There is, for example, an ownership qualification for a parish council election which would not qualify a man to vote in a borough election. Married women, duly qualified, may vote for district and parish councils, but are barred from voting in county or borough council elections; while no woman can qualify for the parliamentary franchise. In the county divisions there are various freeholder qualifications that are not recognized in borough elections; while the lodger and service voters who are on the parliamentary lists cannot exercise the municipal franchise.

The complexity of a system of representation which is based on property rather than on the individual, and which tries to be democratic and yet at the same time to set up barriers against too great an inroad of voters, may be seen at a glance on turning over the pages of Mr. Moloney's manual. The style is bare and bald, not an unnecessary word is added to the directions set out for the registration officers, yet it takes him 244 pages to define and set out the rights of Englishmen to vote for representatives in parliament or on local governing bodies, as owners, occupiers or lodgers, with all the restrictions that surround the franchise and the objections that may be brought against a name that has found its way on to the preliminary list. So complex a subject as registration has, of course, already its text-books. These have, however, usually been prepared for the use of the agents of the political parties or for lawyers in contested cases. Mr. Moloney's handbook is the contribution of a revising barrister, whose experience is necessarily of the widest, and is intended for the practical everyday use of the registration officers who are not political partisans, and whose aim it is to have their lists as free as possible from errors or objections. Hence it is the clearest account, yet in existence, of the working of the English registration laws.

A. G. P.

Federal Regulation of Railway Rates. By ALBERT N. MERRITT. Hart, Schaffner and Marx Prize Essay. (Boston and New York: Houghton, Mifflin and Company. 1907. Pp. xii, 240.)

The value of this work to the student of law and politics lies in its excellent presentation of the economic principles at the basis of what is probably the most vital political and social problem of the day.

American railway rates, Mr. Merritt believes, are not upon the whole excessive. The real complaint is against discriminations of different kinds and for various purposes. These, together with the dangers inherent in the unrestricted control by private individuals of agencies as important to the public as are the railroads, render desirable some manner of government control. But a rigid system of public regulation should be avoided. This holds true especially of any attempt at prescribing rates by the interstate commerce commission. The obstacles in the way of rate fixing by this body are, he thinks, practically insurmountable.

After devoting a chapter to the interstate commerce act of 1887 and its interpretation by the commission and the courts, Mr. Merritt proceeds to outline what he considers a rational plan for public control of rates. Dissatisfaction with the present administration of the law he attributes, not to the personnel of the commission, but to the inconsistency of its function. It is the commission's duty to investigate and punish violations of the law, and then to sit as a court to try cases in which it is frequently the prosecutor. The evils following from this condition, the author believes, can be remedied by the establishment of a special court of transportation, "for the purpose of determining the lawfulness of the rates charged by common carriers." Such a tribunal should be constituted a true federal court, with judges holding office for life, and with final jurisdiction over all but constitutional questions, which last should be appealed directly into the supreme court. In the remaining pages of this book, Mr. Merritt defends this plan against certain legal objections that might be urged against it, and explains the advantages to be expected from its adoption.

J. WALLACE BRYAN.

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